
(1991) 09 GUJ CK 0023
In the Gujarat High Court

Shyamdutt Upadhyay and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 23-09-1991

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1992) 1 GLR 121

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Judgement

B.J. Shethna, J.—The petitioners have earlier filed Miscellaneous Criminal Application No. 2412 of 1991, which was withdrawn on 14-8-1991. However, though Mr. Saiyed, learned Advocate himself appeared in the matter also, no such averment is made in this petition. Not even a statement is made in this application that except this application, no other application is filed before this Court or before the Supreme Court.

2. When I had called upon Mr. Saiyed to explain about the same, he submitted that he has made an averment in para-9 which reads as under:

During the investigation, one bail application was filed but was withdrawn.

This statement is absolutely vague. It leads neither here nor there. However, Mr. Ssiyed stated that he wants to explain the same. Therefore, leave to amend is granted.

3. By way of an amendment, Mr. Saiyed has stated at the end of para-9 in this application as under:

It is submitted that at the time of Bail Application No. 2412 of 1991 the chargesheet was not with the Advocate, though it was submitted in the Court.

From the order passed by the learned Additional Sessions Judge on 26th July, 1991 in Bail Application No. 602 of 1991, it has become more than clear that in fact the chargesheet was with the trial Court Advocate. In fact, on the basis of

that only the petitioner's Advocate made a submission before the trial Court that now the chargesheet is filed and the investigation is over and, therefore, there should not any objection in releasing the accused on bail by the Court. If the papers of the chargesheet were with the trial Court's Advocate of the petitioners, then it is very difficult to believe that the papers of the chargesheet were not with the Advocate of the petitioners, who had filed earlier Bail Application being Miscellaneous Criminal Application No. 2412 of 1991 before this Court. At this stage, it is to be noted that in the earlier Bail Application being M.C.A. No. 2412 of 1991 the statement is made in para 8 by Mr. Saiyed himself, learned Advocate for the petitioners, that the chargesheet has already been filed. Thus, the chargesheet was filed and the papers of the said chargesheet were with the petitioners' Advocate even at that time. In my view, once the Bail Application is filed before this Court after the chargesheet, is received by the accused and the same is withdrawn from this Court, it amounts to dismissal of the petition. When a Court is not inclined to grant the bail, it would give some reasons rejecting the application, which might come in the way of the accused during the trial and because of that the Advocate for the accused would prefer to withdraw the application instead of getting the application rejected with reasons. In such an event the subsequent bail application of the same accused cannot be entertained unless and until fresh circumstance or ground is made out by the accused for releasing him on bail. In this case, no new ground is made out by the petitioners for releasing them on bail. Therefore, this application is required to be rejected.

4. However, Mr. Saiyed urged before me that though the chargesheet was filed before the learned Additional Sessions Judge, the same was with the Advocate appearing for petitioners in the trial Court, and it had not come in the hands of the relatives of the petitioners. Therefore, in the absence of the chargesheet he had withdrawn the earlier petition filed before this Court. But now he has got papers of the chargesheet with him. Therefore, according to him, this Court should consider this Bail Application on its own merits, irrespective of the fact that the earlier Bail Application was withdrawn by him. He has further submitted that the petitioners' relatives are coming from Uttar Pradesh and, therefore, the present application is made after obtaining necessary instructions from the relatives of the petitioners and receiving the papers of the chargesheet. However, this submission made by Mr. Saiyed cannot be accepted for the simple reason that there is no provision of law which provides that the papers of the chargesheet should be received by the relatives. Because the accused are in Jail and when the papers of the chargesheet are received by the relatives then on their instructions when the matter is argued by the petitioners' Advocate the Court should consider the Bail Application and decide the same, such argument is itself devoid of any merit. Therefore, it is rejected.

5. Even assuming for the sake of argument that this Bail Application can be considered on merits and I have to decide whether bail can be granted to the petitioner-accused in this application or not, in that case also, in my view, the bail could not have been granted to the present petitioners. Because the learned

Additional Sessions Judge has observed that in this case the witnesses are not related to the deceased and, therefore, if a threat is given to them then they will not support the prosecution case, which may damage the prosecution case. The learned Additional Sessions Judge has also found prima facie case against the petitioners u/s 302 of the Indian Penal Code as number of blows were given on the head of the deceased.

6. In that view of the matter, no bail can be granted to the petitioners, even if on merits this application was maintainable.

Accordingly this application fails and is rejected.