

(2012) 03 GUJ CK 0004
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 17879 of 2011 with Criminal Miscellaneous Application No. 399 of 2012 With Criminal Miscellaneous Application No. 613 of 2012 With Criminal Miscellaneous Application No. 712 of 2012 with Criminal Miscellaneous Applic

Siraj Mohammad Malek

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 302

Citation : (2012) 03 GUJ CK 0004

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Advocate : R.R. Marshal with Mr. Jigar M. Patel, Cri. Misc. appln. No. 17879/2011, Mr. M.M. Saiyed, Cri. Misc. appln. No. 399 of 2012, Mr. M.G. Nagarkar, Cri. Misc. appln. No. 613 of 2012 and Mr. J.M. Panchal, Cri. Misc. appln. Nos. 712 and 795 of 2012, for the Appellant; S.V. Raju, SPL. P.P. for State, Mr. Rajesh N. Modi and Mr. Mehul M. Mehta, for the Respondent

Judgement

Honourable Mr. Justice MD Shah

1. All these applications have been filed u/s 439 of the Code of Criminal Procedure, 1973, to release the applicants on regular bail in connection with CR No. I-64 of 2011 registered with Kausamba Police Station, Surat, for the offences punishable under Sections 147, 148, 149, 323, 324, 307, 302, 504, 427 and 120(B) of IPC and Sec.135 of B.P.Act.

2. Heard learned Senior Counsel, Mr.R.R.Marshall with Mr.Jigar M.Patel for the applicant in Cri. Misc. Appln. No. 17879 of 2011, learned counsel, Mr.M.M.Saiyed for the applicant in Cri. Misc. Appln. No. 399 of 2012, learned counsel, Mr.M.G.Nagarkar for the applicant in Cri. Misc. Appln. No. 613 of 2012, learned

counsel, Mr.J.M.Panchal for the applicants in Cri.Misc.Appln.Nos. 712 and 795 of 2012 and learned Special Public Prosecutor Mr.S.V.Raju for the respondent-State and Mr.Rajesh N.Modi/Mr.Mehul M.Mehta for the original complainant in all these applications.

3. It is mainly submitted by learned counsel, Mr.J.M.Panchal and other respective learned counsel on behalf of their respective applicants that number of persons of their group(accused side) also received serious injuries and offence was registered and in the said incident also, persons of complainant side used deadly weapons in causing serious injuries. It is further submitted that fight took place between two groups and both the groups received serious injuries and injured persons of both the groups were admitted in the hospital and, therefore, considering the role attributed to each accused, bail applications be decided. It is further submitted that no fatal injuries were caused to the deceased by any of the applicants but it is alleged that present applicants, except the applicant of Cri. Misc. Appln. No. 712 of 2012 who caused injury on the chin portion of deceased, have caused injuries to the persons other than the deceased and they all were discharged from the hospital and considering all these facts, applicants may be enlarged on bail.

4. Learned Special Public Prosecutor, Mr.S.V.Raju, however, vehemently opposed contending that this is not a case of free fight but it appears prima facie from the papers of charge sheet that persons of the accused side were the aggressors and the accused persons numbering 22 came at the place of accident and caused injuries to Babukhan Usufkhan Pathan and he succumbed to the said injuries and his murder took place. They also caused serious injuries to number of other persons namely, Iqbal Ibrahim Mirza, Rehana, etc. It is further argued that all the accused came with deadly weapons and used those deadly weapons in causing serious injuries to the deceased and other persons and, therefore, prima facie ingredients of offence punishable under Sec.149 of IPC are attracted and hence, in such kind of serious offences, Court should not use its discretion in releasing the accused on bail. He has relied on the following decisions:

- i) Gajanand and Others Vs. State of Uttar Pradesh, ;
- ii) Chanan Singh Vs. State of Punjab, and
- iii) State Vs. Kolis Hira Bhaga and Others, .

5. Considering the rival submissions made on behalf of the parties, this Court has gone through the charge sheet papers along with injury certificates of injured persons together decisions relied on by learned Public Prosecutor, Mr.Raju. This Court cannot dispute the principles laid down by the Hon"ble Apex Court as well as this Court in the decisions relied on by Mr.Raju. However, it may be noted that all the aforesaid decisions relied on by Mr.Raju were rendered at the end of trial after appreciating the entire evidence on record. Hence, this Court would not like to give any weightage to those decisions.

6. This Court would not discard the fact that the accused side also received serious injuries and some of the accused were even hospitalised and they took treatment. Hence, in the opinion of this Court, at this juncture, it could not be decided whether it is a case of free fight or prima facie ingredients of Sec.149 of IPC are attracted or not. Further, this Court would not like to discuss or appreciate the entire evidence appearing on record at this stage of deciding the bail applications as it may prejudice the parties at the time of trial.

7. As far as the applicant of Cri. Misc. Appln. No. 712 of 2012 Ibrahimbhai Rasulbhai Malek, who is the accused No. 1 is concerned, it appears from the papers of charge sheet that it is he along other accused who dragged the deceased out of the van and gave sword blows to the deceased Babukhan Pathan. The sword discovered also bears the bloodstain marks. This is supported by the statements of injured witnesses and other witnesses namely, Rehanakhatun, Iqbal Mirza, Habibkhan Pathan, Ayubkhan Pathan, Nasrullakha Habibkhan Pathan, Ruksanakhatun, Mohamad Pathan, Mumtaz, Arbazkhan, Tausifkhan Pathan, Rizwan Mirza, Irshad, Zuber Khan, Imrankhan etc. to the effect that accused No. 1-Ibrahimbhai Rasulbhai Malek not only pulled the deceased from the Maruti van but had given blows with sharp cutting instrument like sword to the deceased. Post mortem note also substantiates the said version. Therefore, there is a strong prima facie case against the accused No. 1-Ibrahimbhai Rasulbhai Malek involving him in the serious offence of murder of Babukhan Pathan. Merely because it is contended by Mr.Panchal that he did not cause deadly injury but caused injury on chin portion is not sufficient to get him released at this stage particularly in view of the fact that it is he who dragged the deceased from the Maruti van and inflicted grievous injuries of fatal nature on the deceased with the sharp cutting instrument and hence, this Court would not like to use its discretion in enlarging him on bail.

8. As far as the applicant-accused No. 9-Yakub Ismail Malek of Cri. Misc. Appln. No. 613 of 2012 is concerned, it is contended by Mr.M.G.Nagarkar that he did not cause any injuries to the deceased. However, it is pertinent to note that it is he who also caused injuries to Iqbal Ibrahim Mirza on head and other parts of the body with a sharp cutting instrument like sword as is seen from the medical certificate of the injured Iqbal Ibrahim Mirza. He also caused injuries on the left side of the head of witness Rehana. This is supported by the statements of injured witnesses Iqbal Mirza Rehana and witness Nashrula. The certificate dated 28-1-2012 issued by Ayush I.C.U. & Multi-Speciality Hospital reads as under:

To whomsoever it may concern that pt" Iqbalbhai Ibrahim Mirza was admitted in our hospital on 26-4-2011 and was discharged on 2-5-2011 for alleged H/o Assault injury by sharp instrument, head injury-left fronto-parietal compound fracture with focal SAH with depressed fracture Max. depression 12mm; Surgery was done on 26-4-2011-Elevation and excision of depressed fracture.

It is clear from the aforesaid certificate that the deadly injuries were inflicted on the injured witness Iqbal Ibrahim Mirza by the accused No. 9-Yakub Ismail Malek

and he was to be operated and if immediate treatment was not provided to him, he would have died. It is his fortune that he has survived even after receiving such serious deadly injuries for. This indicates the seriousness of crime allegedly committed by the applicant-Yakub Ismail Malek and hence, at this juncture, this Court would not like to release him on bail.

9. However, looking to the particular individual role attributed to each of the other applicants accused in the papers of charge sheet and the manner in which the incident took place and now the charge-sheet is filed, without entering into the merits of the case, prima facie, this Court is of the opinion that this is a fit case to exercise the discretion to enlarge those applicants on bail.

10. Cri.Misc.Appln.Nos.17879 of 2011, Cri. Misc. Appln. No. 399 of 2012 and Cri. Misc. Appln. No. 795 of 2012 are therefore allowed and applicants of these applications are ordered to be released on bail in connection with CR No. I-64 of 2011 registered with Kausamba Police Station, Surat, for the offence alleged against them in these applications on each of them executing personal bond of Rs.25,000/-(Rupees twentyfive thousand only) with one solvent surety each of the like amount to the satisfaction of the trial Court and subject to the conditions that -

- a) they shall not take undue advantage of liberty or abuse liberty;
- b) they shall not try to tamper or pressurise the prosecution witnesses or complainant in any manner;
- c) they shall maintain law and order and should cooperate the Investigating Officer;
- d) they shall not act in a manner injurious to the interest of the prosecution;
- e) they shall not leave the State of Gujarat without prior permission of the Sessions Judge concerned;
- f) they shall mark presence before the Kausamba Police Station, Surat, once in a month more particularly between 1st and 5th of month between 10.00 a.m. and 2.00 p.m. for one year;
- g) they shall not enter the Surat City for a period of six months without prior permission of the Court but for attending the court in connection with the case and for marking presence, they shall be free to enter and shall leave the limits immediately thereafter;
- h) furnish the address of their residence along with the proof to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;
- i) surrender their passport, if any, to the lower Court within a week.

11. If the breach of any of the above conditions is committed, the concerned Court will be free to issue warrant or take appropriate action in the matters.

12. Bail before the lower Court having jurisdiction to try the case. It would be open to the trial Court concerned to give time to furnish the solvency certificate if prayed for. Rule is made absolute qua Cri.Misc.Appln.Nos.17879 of 2011, Cri. Misc. Appln. No. 399 of 2012 and Cri. Misc. Appln. No. 795 of 2012.

13. Cri. Misc. Appln. No. 613 of 2012 and Cri. Misc. Appln. No. 712 of 2012 are however rejected. Rule is discharged qua Cri. Misc. Appln. No. 613 of 2012 and Cri. Misc. Appln. No. 712 of 2012.

14. Trial court is directed to dispose of the trial as early as possible preferably within nine months from today failing which, applicants of Cri. Misc. Appln. No. 613 of 2012 and Cri. Misc. Appln. No. 712 of 2012 are at liberty to approach again and at that time, it will be decided in accordance with law and without being influenced by this order.

15. At the trial, the trial court shall not be influenced by the observations of preliminary nature qua the evidence at this stage, made by this Court in this common order.

16. Direct service is permitted.

17. Office is directed to place a copy of this judgment in each matter.