
(1987) 11 GUJ CK 0012
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Bhagwanji Pitamber and Others

RESPONDENT

Date of Decision : 26-11-1987

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (1988) 1 GLR 445

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Judgement

R.A. Mehta, J.—This is an application against the order granting bail. It is treated as an application for cancellation of bail and not as revision application.

2. The learned Addl. P.P. has submitted that the offence charged against the accused is punishable u/s 302 of IPC read with Sections. 147, 148, 149, 307, 324, 323 of IPC. There are in all 29 accused and all of them have been granted bail by the learned Addl. Sessions Judge, Morvi by an order dated 27-8-1987. The State has preferred this application against the present three accused persons and submitted that these three persons have taken direct and active part in the incident resulting into the death of Lalubha. The learned Addl. P.P. has also submitted that there is great tension in the village and when all the accused were released on bail, the State had to put Special Police Force in village. He has submitted that at present that Police Force is withdrawn.

3. The learned Counsel for the respondent-accused has submitted that ordinarily bail is to be granted and only in special circumstances, bail can be refused and in the present case, there are circumstances for granting bail and the learned Sessions Judge, on considering the circumstances, granted bail and three months have passed thereafter without any untoward incident and, therefore, the bail cannot be cancelled. He has submitted that the relevant circumstances taken into consideration by the Sessions Court are that there is a cross case in respect of the injuries suffered by the persons on the accused side and, therefore there is a probable defence of private defence apart from other defences. Therefore, the

offence would not be punishable u/s 302 of IPC and the Sessions Court has rightly followed the judgment of this Court in Misc. Cri. Application No. 479 of 1975 delivered on 26-8-1975 by T.U. Mehta, J. The relevant observations are as under:

Now looking to the facts of this case, it is found that the accused No. 1 has filed a cross complaint with regard to the very incident on which the prosecution has put reliance to prosecute to him. The applicants have produced medical certificate to show that three of them were medically examined on the day of the incident and all the three of them had injuries on their persons. Under these circumstances, it is prima facie found that there was some mutual quarrel between the parties and that during the course of this quarrel, deceased Bachu received injuries on his head which proved fatal. These facts prima facie show that the applicants have got good case to put forward before the Court to escape punishment u/s 302 of I.P.C. In this case, from the circumstances, I find that this is a fit case for enlarging the applicants on bail.

4. The learned Sessions Judge has granted bail to all the accused in the present case. It clearly appears that the learned Sessions Judge has mechanically followed the aforesaid judgment without appreciating its ratio and different facts. The learned Sessions Judge seems to have assumed that whenever there is a cross case and injuries on the accused persons, there is a prima facie case of private defence. This is clearly a misconception. Such simple proposition mechanically followed would result into very serious consequences. In a given incident, there might be deaths on both sides. That does not necessarily mean that both sides have a right of private defence. It would depend upon the facts and circumstances of each case as to whether there is a right of private defence to any of the side and if yes, which side. It cannot be said that both sides have a right of private defence. In any case, it would be disastrous to presume that in all cross cases with injuries, there is a right of private defence. In some cases, there may not be any right of private defence to either side and it may be a case of free fight. Therefore, without going into the question prima facie, it cannot be said that merely because there is a cross case and injuries on the side of the accused the accused has a probable case of self defence and, therefore, there is no probable case u/s 302 of IPC. At the stage of consideration of bail, what the Court has to examine is whether there is reason to believe that the accused has committed any offence punishable with death or imprisonment for life and, therefore, the Court has to consider whether there is reason to believe that the accused has committed an offence of murder. At that stage if there is probability of conviction u/s 302 of IPC, there is reason to believe that the accused has committed such offence. Merely because the accused have some injuries, it does not necessarily mean that they have prima facie established the right of private defence. They might receive injuries in exercise of their right of private defence, or the other side may have a right of self defence or they might receive injuries in a free fight. At the stage of deciding the question of bail, it is not possible to hold merely from the existence of cross complaint and injuries that there is no prima facie case of offence punishable u/s 302 of IPC. Therefore, the approach of

the learned Sessions Judge in mechanically holding the probability of the right of self defence is illegal and erroneous.

5. In the present case, on the complainant side there were only two persons (of whom one died) and the accused side, there were 29 persons. In such facts, a lot more would be required to hold that the accused had a right of private defence and not merely a cross complaint and some injuries.

6. However, having regard to the fact that after release of all the 29 accused in August 1987, there is no untoward incident or complaint or grievance in the last three months and the fact that this is a case where question is regarding cancellation of bail and not of granting of bail, the interest of justice would be served by imposing conditions on the three respondents who are alleged to have taken actual part in the offence resulting into the death of Lalubha. The learned Counsel for the respondents-accused has submitted that these three persons will remain out of Rajkot district till the commencement of the trial and that they will stay at village Bodki, taluka Jodia, district Jamnagar and they will report to Amaran Police Station once a week on every Tuesday in the morning between 8-00 to 11-00.

7. In the result, the application for cancellation of bail is rejected subject to the modification of conditions of bail in respect of the three respondents-accused. In respect of the respondents-accused, additional condition is imposed that till the commencement of the trial, they shall not enter Rajkot District and that they shall report to Amaran Police Station on every Tuesday between 8-00 to 11-00 a. m. and that they will not leave the limits of that police station without prior permission of the Court. However, the respondents-accused would be at liberty to go to Morvi Court whenever their presence is required in connection with the proceedings against them.

Rule is made absolute to that extent only. A copy of the writ to be sent to Amaran Police Station.