

(2008) 09 GUJ CK 0067

In the Gujarat High Court

Case No : Criminal Revision Application No. 482 of 2008

State of Gujarat

APPELLANT

Vs

Mithabhai Pashabhai Patel and Others

RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Bombay Police Act, 1951 — Section 135

Criminal Procedure Code, 1973 (CrPC) — Section 154, 155, 156, 157, 158

Penal Code, 1860 (IPC) — Section 120B, 143, 147, 148, 149

Citation : (2008) 09 GUJ CK 0067

Hon'ble Judges : H.B. Antani, J

Bench : Single Bench

Advocate : J.M. Panchal, Special Public Prosecutor and U.A. Trivedi, Additional Special Public Prosecutor, for the Appellant; H.L. Patel, for H.L. Patel, for the Respondent

Final Decision : Allowed

Judgement

H.B. Antani, J.—Rule. Learned Advocate Mr. H.L. Patel waives service of Rule for the respondents.

2. This is an application preferred u/s 397 read with Section 401 of the Code of Criminal Procedure, 1973 ("Cr.P.C.", for short) against the order passed by the learned Second Additional Sessions Judge, Himatnagar dated 23-05-2008 passed below Exh. 34 in Sessions Case No. 70 of 2002.

3. Learned Special Public Prosecutor Mr. J.M. Panchal submitted that the accused are on bail in connection with FIR registered as CR bearing No. I-26 of 2002 registered with Prantij Police Station and facing trial for the offences punishable under Sections 302, 307, 395, 396, 397, 201, 435, 324, 143, 147, 148, 149, 153A, 341, 337, 427 and 120B of the Indian Penal Code ("IPC", for short) as well as u/s 135 of the Bombay Police Act. It is submitted that the incident in question took place on 20-08-2002 near Vadvasa Patia Village near Prantij. The complaint was lodged on the same day. During the course of investigation, six persons

were arrested and the application for remand being made by the Investigating Agency, the learned Magistrate granted the remand. After the completion of the investigation, charge-sheet was filed on 14-06-2002 and the same was registered as Sessions Case No. 70 of 2002. By passage of time, the accused persons preferred the bail application bearing Criminal Miscellaneous Application No. 4115 of 2008 before the High Court and the High Court granted the bail to all the six persons on 30-08-2002.

4. It is submitted by the learned Prosecutor that considering the sensitive nature of the cases involved, the Hon"ble Apex Court formed Special Investigation Team ("SIT", for short) to conduct the investigation, including further investigation by order dated 26-03-2008 passed in Writ Petition (Criminal) No. 109 of 2003 and the State Government gave effect to the directions vide notification dated 01-04-2008. Thus, the SIT is empowered to seek re-investigation of the matters referred to by the Apex Court.

5. It is submitted by the learned Prosecutor that during the course of re-investigation, the SIT felt that fresh police remand of the accused is necessary in connection with the offences punishable under Sections 307, 395, 396, 397, 188, 341, 201 and 120B of IPC, as, at the time when the remand was granted by the learned Magistrate, these Sections were not invoked but were added subsequently and, therefore, investigation with respect to these charges could not be conducted and the earlier investigation was carried out in slipshod manner. Therefore, the application under Exh. 34 was given by the Investigating Agency seeking 14 days remand of the persons on the grounds mentioned therein to the learned 2nd Additional Sessions Judge, Himatnagar. However, the learned Judge rejected the application for remand of the accused persons by order dated 23-05-2008 against which the State has preferred the present Criminal Revision Application.

6. The learned Prosecutor submitted that the learned Sessions Judge has erred in holding that since the accused are on regular bail granted by the Hon"ble High Court in Criminal Miscellaneous Application No. 4115 of 2002 by order dated 30-08-2002, it requires to be cancelled first and, thereafter, the remand can be granted. The learned Judge has also erroneously held that the remand can only be granted by the Magistrate. While rejecting the application for remand, the SIT is denied the powers of the Investigating Agency or Investigating Officers to seek remand in order to gather more material in the matter. The learned Prosecutor also submitted that the order granting police remand is not revisable but when the order of the refusal of the remand is passed, then the same stands on a different footing. When the order itself affects the right of the person, then it can never be said to be an interlocutory order. Chapter XII of Cr.P.C. deals with the information to the police and their powers to investigate and Sections 154 to 173 are relevant. Though the charge is already framed and the trial is pending before the concerned Judge, further investigation is ordered by the Apex Court and as it is done in the exceptional circumstances, if the prayer for remand is not granted,

then the entire purpose of the investigation and collecting necessary material during the remand would get frustrated. The learned Prosecutor submitted that as substantial change has taken place and considering the serious charges which are required to be added, further investigation is required to be conducted by the SIT in the matter and there is no need to cancel the bail application granted on earlier occasion while granting remand of the accused.

7. The learned Prosecutor placed reliance on the judgment in case of Prahlad Singh Bhati Vs. N.C.T. Delhi and Another, and Haryana Land Reclamation and Development Corporation Ltd. Vs. State of Haryana and Another, in support submissions canvassed at the Bar that it is fit case wherein the revisional powers can be exercised by this Court u/s 397 read with Section 401 of Cr.P.C. and the prayer, as set out in the application for remand, be granted.

8. Learned Advocate Mr. Vijay Patel appearing for the respondents submitted that the investigation which was entrusted to the Investigating Agency when the charge-sheet was filed against the respondents is of a continuous nature. However, in view of the direction given by the Hon"ble Supreme Court, further inquiry/investigation is required to be made in CR bearing No. I-26 of 2002. The learned Advocate submitted that no fresh investigation can be made at this stage since the trial has already commenced and even if fresh investigation is made then the respondents cannot be remanded to police custody as they were already remanded to the police custody when the initial investigation was carried out in the matter. Thereafter, the charge was framed and the trial has proceeded. The learned Advocate submitted that no separate offence is required to be investigated and even though certain Sections such as Sections 307, 395, 396, 397, 188, 341, 201 and 120B of IPC were added subsequently, it cannot be said that the cognizance of the offences was not taken by the Court. The newly added Sections are relating to lesser offences while the respondents are already charged for the offences punishable under Sections 302, 323, 324, 435, 147, 148, 149 of IPC and Section 135 of the Bombay Police Act. The learned Advocate further submitted that custody of accused persons is referred to in Section 309 of Cr.P.C. Section 309 deals with the power to postpone the proceedings. It is stated in Section 309(1) that in every inquiry or trial, the proceedings shall be held as expeditiously as possible and particularly when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. It is mentioned in the proviso to Sub-section (2) that no Magistrate shall remand an accused person to the custody under this Section for a term exceeding 15 days at a time. Thus, the learned Advocate submitted that when the trial has commenced and cognizance of the offences is already taken by the Court, then the Court has to remand the accused to the police custody after recording the reasons for the same and, therefore, the provisions of Section 167(2) of the Cr.P.C. cannot be invoked in the facts and circumstances of the present case. The learned Advocate submitted that at the post-cognizance stage of the matter, no

case is made out by the prosecution for the remand of the accused persons and, therefore, the remand application preferred by the State was rightly rejected by the learned Judge with the observations that the bail which was granted in the matter was required to be cancelled first and thereafter the application for remand can be considered. In view of the aforesaid facts and circumstances, the prayer made by the prosecution with regard to police remand cannot be entertained and even the default bail if at all is granted to the accused, then the same cannot be cancelled. When the bail was granted in the year 2002, it was granted after hearing both the sides on merits of the case and, therefore, the bail which was granted in 2002 is required to be cancelled and, thereafter, the present application for remand in pursuance of further investigation can be entertained. Thus, the learned Advocate submitted that the prosecution has not made out a case for grant of remand and, therefore, the application deserves to be dismissed. The learned Advocate further submitted that even on perusal of the grounds which are mentioned in the application, they do not warrant remand of the accused to the police custody.

9. The learned Advocate submitted that the Revision Application preferred by the prosecution is u/s 397 read with 401 of the Cr.P.C. and the power of this Court to entertain the Revision Application is very narrow and limited. The order of rejection of remand application by the learned Additional Sessions Judge does not call for any interference by this Court while exercising powers u/s 397 of the Cr.P.C. and as the order is of an interlocutory nature, the same cannot be entertained and even on that ground the Revision Application deserves to be dismissed. Thus, the learned Advocate submitted that on overall perusal of the grounds mentioned in the application for remand and reasoning given by the learned Additional Sessions Judge while passing the order below Exh. 34 in Sessions Case No. 70 of 2002, the present Revision Application does not call for any interference and the same is liable to be dismissed.

10. The learned Advocate has placed reliance on the following judgments in support of the submissions canvassed at the Bar:

Raghubir Singh and Others Vs. State of Bihar,

Citing this judgment, the learned Advocate submitted that the Supreme Court, while dealing with the provisions of Section 167(2), Proviso, Section 309, Section 437(5) and Section 439(2), held as under:

An order for release on bail made under the proviso to Section 167(2) is not defeated by lapse of time, the filing of the charge-sheet or by remand to custody u/s 309(2). The order for release on bail may however be cancelled u/s 437(5) or Section 439(2). Generally the grounds for cancellation of bail, broadly, are, interference or attempt to interfere with the due course of administration of justice, or abuse of the liberty granted to him. The due administration of justice may be interfered with by intimidating or suborning witnesses, by creating or causing disappearance of evidence etc. The course of justice may be evaded or

attempted to be evaded by leaving the country or going underground or otherwise placing himself beyond the reach of the sureties. He may abuse the liberty granted to him by indulging in similar or other unlawful acts. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in sixty days, after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. In the last mentioned case, one would expect very strong grounds indeed.

Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni,

In this case cited by the learned Advocate, the Supreme Court considered the provisions of Section 167(2) of the Cr.P.C. and held:

In one occurrence it may so happen that the accused might have committed several offences and the police may arrest him in connection with one or two offences on the basis of the available information and obtain police custody. If during the investigation his complicity in more serious offences during the same occurrence is disclosed that does not authorise the police to ask for police custody for a further period after the expiry of the first fifteen days. If that is permitted then the police can go on adding some offence or the other of a serious nature at various stages and seek further detention in police custody repeatedly, this would defeat the very object underlying Section 167. However, this limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. That would be a different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation he must be formally arrested in connection with other case and then obtain the order of the magistrate for detention in police custody. If best must be made in this connection explicit that such re-arrest or second arrest and seeking police custody after the expiry of the period of first fifteen days should be with regard to the investigation of a different case other than the specific one in respect of which the accused is already in custody. A literal construction of Section 167(2) to the effect that a fresh remand for police custody of a person already in judicial custody during investigation of a specific case cannot under any circumstances be issued would seriously hamper the very investigation or the other case the importance of which needs no special emphasis. The procedural law is meant to further the ends of justice and not to frustrate the same.

State of Gujarat Vs. Virbhadrasingh Govubha Gohil and Another,

The learned Advocate submitted that our High Court dealt with the provisions of

Sections 167, 397 and 439(2) of the Cr.P.C. in this judgment and held:

To grant the remand and to consider the application of the accused for enlarging them on bail are two different things. The remand period has not been extended and that action may be challenged by the State Government before this Court but, the challenge to the action in the criminal revision application will not preclude the Sessions Court to consider the application of the accused u/s 439 of the Criminal Procedure Code, 1973, to enlarge him on bail. In case the proper case is made out, Court fails to see how it is not open to the Sessions Court not to enlarge the accused on the bail. Much emphasis has been laid upon the question that without remand it is difficult to recover the currency note of Rs. 50/- which is the amount of bribe accepted by the accused but, Court fails to see how this ground is sufficient to cancel the bail of the accused granted by the Sessions Court to him. Even if the accused is enlarged on bail, he has to make himself available for interrogation to the investigation or police officer in charge of the investigation as the case may be. When the accused is available for interrogation, he can be interrogated for investigation purposes which include recovery of the muddamal amount. However, on this ground the bail cannot be cancelled. There is no bar that the investigating officer or the police officer concerned has no power to proceed with the investigation without remand and without keeping the accused in police custody which includes power to make necessary recoveries at the instance of the accused.

State through C.B.I. Vs. Dawood Ibrahim Kaskar and others,

Citing this judgment, the learned Advocate submitted that the Apex Court considered the provisions of Sections 309(2) and Section 167 in this case and held as under:

There cannot be any manner of doubt that the remand and the custody referred to in the first proviso to Section 309(2) are different from detention in custody u/s 167. While remand under the former relates to a stage after cognizance and can only be to judicial custody, detention under the latter relates to the stage of investigation and can initially be either in police custody or judicial custody. Since, however, even after cognizance is taken of an offence the police has a power to investigate into it further, which can be exercised only in accordance with Chapter XII, there is no reason whatsoever why the provisions of Section 167 thereof would not apply to a person who comes to be later arrested by the police in course of such investigation. If Section 309(2) is interpreted - to mean that after the Court takes cognizance of an offence it cannot exercise its power of detention in police custody u/s 167, the Investigating Agency would be deprived of an opportunity to interrogate a person arrested during further investigation, even if it can on production of sufficient materials, convince the Court that his detention in its (police) custody was essential for that purpose. Therefore the words "accused if in custody" appearing in Section 309(2) refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is

subsequently arrested in course of further investigation. So far as the accused in the first category is concerned he can be remanded to judicial custody only in view of Section 309(2), but he who comes under the second category will be governed by Section 167 so long as further investigation continues. That necessarily means that in respect of the latter the Court which has taken cognizance of the offence may exercise its power to detain him in police custody, subject to the fulfilment of the requirements and the limitation of Section 167.

Jairajsinh Temubha Jadeja Vs. State of Gujarat,

This judgment is cited by the learned Advocate in support of the submission that remand u/s 167(2) of the Cr.P.C. cannot be granted to obtain confessional statement or to discover the material used by the other accused. The principles laid down in the aforesaid judgment are required to be followed while considering the case for the remand of the accused.

(vi) Dinesh Dalmia Vs. C.B.I.,

The learned Advocate cited this judgment wherein the Apex Court considered the provisions of Sections 167, 309, 173 and 190 of the Cr.P.C. and the applicability and scope of Sections 167(2) and 309(2) of the Cr.P.C. and held that the remand of the accused is contemplated at two stage: pre-cognizance and post-cognizance. Whereas u/s 167(2) is attracted where cognizance has not been taken, Section 309(2) is attracted only after cognizance has been taken. The right u/s 167(2) proviso is conditional one being conditional on the investigation having remained pending i.e. on the charge-sheet not having been presented. Once the charge-sheet is filed, the right u/s 167(2) proviso ceases and does not revive only because a further investigation remains pending within meaning of Section 173(8).

11. Heard learned Special Public Prosecutor Mr. J.M. Panchal for the revisionist-State and learned Advocate Mr. Vijay Patel for the respondents at length and in great detail. I have also perused the averments made in the Revision Application as well as the order passed by the learned Judge below Exh. 34 in remand application in connection with C.R. bearing No. I-26 of 2002 for the offences punishable under Sections 302, 307, 395, 396, 397, 201, 435, 324, 143, 147, 148, 149, 153A, 341, 337, 427 and 120B of the IPC as well as u/s 135 of the Bombay Police Act. I have also perused the directions given by the Apex Court in the order dated 26-03-2008 passed in Writ Petition (Criminal) No. 109 of 2003.

12. At this juncture, it would be expedient to refer to the following observations made by the Supreme Court in the order dated 26-03-2008 which relate to the purpose of constituting the SIT as also its functions and powers:

After having heard learned Counsel for the parties, we feel that considering the sensitive nature of the cases involved, appointment of a Special Investigation Team (in short "SIT") is warranted....

* * * * * If any person wants to make statement before the SIT for giving his or

her version of the alleged incidents, the SIT shall record it. Those who want to give their version shall in writing intimate the convenor of the Committee so that the SIT can call him or her for the purpose of recording his/her statement. It is needless to say that the SIT shall not confine the investigation by recording statement of those who come forward to give his or her version and shall be free to make such inquiries/investigation as felt necessary by it. The State Government shall provide necessary infrastructure and provide resources for effective working of the SIT. The report of the SIT shall be furnished to this Court in a sealed cover after completion of the inquiry/investigation for which three months time is granted. After the report is submitted, the further action required to be taken shall be dealt with by this Court....

* * * * * ...So far as SLP (Cri.) No. 284/03 and T.P. (Cri.) 43/2004 are concerned, the case is commonly known as "British Nationals Case" and relates to Himmat Nagar, Prantij P.S. District Sabarkantha and relates to FIR 1/26/2002.

We make it clear that SIT shall be free to work out the modalities and the norms required to be followed for the purpose of inquiry/investigation including further investigation. Needless to say the sole object of the Criminal Justice System is to ensure that a person who is guilty of an offence is punished....

13. In pursuance of the directions given by the Apex Court in the aforesaid matter, the State Government issued a notification dated 01-04-2008. While exercising powers conferred under the said directions, it was thought fit to add various Sections to the FIR bearing No. I-26 of 2002 already lodged at Prantij Police Station in connection with the incident that took place on 28-02-2002 at 1800 Hours near Vadvasa Patia Village on National Highway No. 8. As per the complaint given by Imran Mohamad Salim Dawood, resident of England and native of Lajpur, Navsari District, the accused persons formed an unlawful assembly and they were armed with sticks and scrappers, knife in their hand and had intercepted Tata Suma bearing No. GJ-21-1414 near Vadvasa Patia Village on National Highway No. 8 during "Gujarat Bandh" call in connection with aftermath of the Godhra incident. When the accused came to know that persons who was sitting in the vehicle were of Muslim community, they had beaten them and caused head injury to the uncle - Mohamad Aswar and the driver - Yusuf Pelagar and killed them. The driver was thrown out from Tata Suma and ultimately the Tata Suma was set on fire.

14. In view of the changed circumstances, the application for seeking remand of the accused persons for a period of 14 days was preferred before the learned Additional Sessions Judge on 21-05-2008 on the following 11 grounds:

The Video Camera, Wrist Watch, Indian currency as well as British Currency of 300 Pounds, British Passport, return air-ticket was not recovered during the investigation.

During the course of the incident, Tata Sumo bearing No. GJ-21-1414 which was occupied by the complainant and other persons was set on fire, but was not

ascertained as to how it was set on fire and what material was used to set on fire the said Tata Sumo Car and that requires to be investigated.

The person named Shakil Abdul, respondent of England, was not found and where he was kept in some confinement or buried or set on fire is also required to be ascertained.

The weapons which were used by the accused in the commission of offences such as stick, dharia, knife, etc were not recovered and for that purpose, the police custody of the accused is required.

As per the complaint given by the complainant, crowd consisting of 15 persons, only 6 persons were arrested. In order to ascertain about the involvement of other persons in the commission of offences, interrogation of 6 persons is required by the Investigating Agency.

As per expert of FSL Shri VM Patel who carried out the Lie Detector Test on 31-05-2002, further interrogation of 3 persons is required in the matter and, therefore, the custodial remand is prayed for by the Investigating Agency.

Even the muddamal and other link connecting the accused with the commission of offences is required to be established and for that purpose, custodial interrogation is required.

When the Tata Sumo bearing No. GJ-21-1414 was intercepted by 3 bikes, 1 bike was seized and the rest of the bikes were not seized and for that purpose, interrogation in the matter is required.

The muddamal which was lost during the incident was not recovered and no efforts were made when the initial investigation took place in the matter and, therefore, further remand is prayed for.

At the place when the incident took place, three other offences had also taken place in a nearby area and whether the present accused are also involved in the other offences is required to be ascertained.

In view of the directions given in Writ Petition (Criminal) No. 109 of 2003, 284 of 2002 and 43 of 2004, the family members of the complainant also expressed dissatisfaction with the earlier inquiry/investigation and, therefore, further interrogation of the accused is required in the matter.

Thus, in view of the 11 reasons stated above, the Investigating Officer prayed to grant 14 days remand of the accused persons. But the application was rejected on the ground that the accused persons are neither in the custody of the Court nor with the Police Department and they were released on regular bail by the Hon"ble High Court. Therefore, the Investigating Agency has to first obtain the cancellation of regular bail and the same can be done by the High Court. Therefore, unless the bail order is cancelled, the Court has no jurisdiction to grant or even hear the remand application. In view of the aforesaid facts and circumstances of the case, mainly on this ground, the learned Judge rejected the

application for remand.

15. I have considered the gravity of the offences in which the respondents are involved in the present case and the nature of the offences as well as the manner in which the offences are committed by them. I have further considered the newly added Sections which are attracted in the present case. In view of the directions given by the Apex Court, as discussed hereinabove, and in view of the newly added Sections, the Investigating Officer wants custodial interrogation of accused persons and, therefore, he made an application before the learned Additional Sessions Judge, enumerating the grounds therein. It has been contended by the learned Prosecutor that earlier investigation was conducted in casual and perfunctory manner. It was no investigation at all and certain lacunae had remained in the said investigation. In view of the aforesaid facts and circumstances, further investigation is required to be made and Section 167(2) gives ample power for further investigation. The learned Prosecutor also placed reliance on Chapter XII of the Cr.P.C. which deals with the information to the police and their powers to investigate and Sections 154 to 173 are relevant. It is true that the charge in the matter is already framed and the trial is pending before the concerned Court, but further investigation is ordered by the Apex Court and it is done in the exceptional circumstances. In view of the above and considering the circumstances narrated by the learned Prosecutor and enumerated in the Criminal Revision Application, further remand of the respondents, in my considered view, is required to be given in the facts and circumstances of the case as earlier investigation was carried out in a most perfunctory manner. I am also aware of the fact that the Investigating Agency has added Sections such as Sections 307, 395, 396, 397, 188, 341, 201 and 120B of IPC and considering the aforesaid facts and circumstances of the case, since new Sections are added, further inquiry/investigation is required to be conducted in the matter and the Investigating Agency cannot be denied such a right and further investigation and remand, if necessary, of the accused. In view of the above, the contention raised on behalf of the respondents that on earlier occasion, the respondents were granted bail for the offences punishable under Sections 302, 323, 324, 435, 147, 148, 149 of IPC and Section 135 of the Bombay Police Act in connection with C.R. bearing No. I-26 of 2002 registered with Prantij Police Station has no relevance, as new Sections are added subsequently, and in pursuance thereof, it is the right of the Investigating Agency to seek remand of the accused in order to unearth important material or to bring to fore those material which was not considered during the earlier investigation conducted by the Investigating Agency.

16. The learned Advocate for the respondents has vehemently submitted that the revisional powers of this Court is very narrow and limited and since the order passed by the learned Additional Sessions Judge below Exh. 34 in the remand application is in the nature of interlocutory order, this Court should not interfere while exercising powers u/s 397 read with 401 of the Cr.P.C. However, the Revision Application is maintainable as it is not against the order of granting

remand of the accused persons, but is against the order of refusal of remand of the accused persons and the Investigating Agency is well within its right to seek remand of the accused in pursuance of further investigation and that right, in my considered view, cannot be denied to the Investigating Agency. In view of the foregoing discussion, the Revision Application preferred, which is against the refusal of the order of remand, is certainly maintainable u/s 397 read with Section 401 of Cr.P.C. Thus, there is no merit in the submissions canvassed by the learned Advocate on behalf of the respondents that the Court does not have the jurisdiction to entertain the Revision Application u/s 397 of Cr.P.C. and, therefore, the contention raised by the learned Counsel for the respondents is hereby rejected.

17. It is also contended by the learned Advocate on behalf of the respondents that proviso to Section 309(2) would be attracted and the provisions of Section 167(2) cannot be invoked as the cognizance was already taken in the matter. However, in pursuance of the order passed by the Apex Court, fresh inquiry/ investigation was carried out by SIT and the notification in that regard was also issued by the State Government. The Investigating Agency filed an application seeking remand of the accused persons in order to unearth information and the other material so as to link all the accused persons with the commission of offences which were subsequently added. Therefore, considering the provisions of Chapter XII of the Cr.P.C., it is a fit case to grant the remand as prayed for by the applicant.

18. It is also urged by the learned Advocate for the respondents that since the respondents were released on bail in 2002 when they were arrested in connection with the offences punishable under Sections 302, 323, 324, 435, 147, 148, 149 of IPC and Section 135 of the Bombay Police Act and, therefore, before cancelling their bail, the present application cannot be entertained has also no substance, as the Investigating Agency (SIT), in pursuance of the order by the Apex Court, is empowered to conduct investigation, including re-investigation. Thus, considering the newly added Sections, there is no need for the Investigating Agency to seek cancellation of the earlier bail which was granted to the accused in the facts and circumstances of the case as the Investigating Agency can always pray for remand in connection with the said offences. Therefore, there is no merit or substance even in the submission canvassed by the learned Advocate for the respondents and the same is hereby rejected.

19. One of the contentions raised on behalf of the respondents is that the learned Additional Sessions Judge is right in holding that the Sessions Court, which is not a Committal Court, is not competent to grant remand as the power to grant remand rests exclusively with the Committal Court and, therefore, this Court also cannot exercise the powers vested in the Magistrate. However, since the trial has already commenced before the learned Sessions Judge, he, in my view, ought to have exercised the powers u/s 397 of Cr.P.C. Be that as it may, without delving much into this, I am of the view that while exercising revisional

jurisdiction, this Court can certainly exercise the powers and pass appropriate order on merits.

20. Considering the overall submissions canvassed by the learned Advocates of both the sides, the Revision Application preferred by the State requires to be allowed and it is, therefore, hereby allowed. The order dated 23-05-2008 passed by the learned 2nd Additional Sessions Judge, Himmatnagar, District: Sabarkantha below Exh. 34 in Sessions Case No. 70 of 2002 is hereby quashed and set aside. The respondents-accused are directed to report to the Court of learned Additional Sessions Judge, Himmatnagar, District: Sabarkantha on 8th September, 2008 at 11.30 AM. The learned Additional Sessions Judge is directed to implement the order of remand passed by this Court forthwith. With these observations, the Revision Application is allowed. Rule is made absolute.

FURTHER ORDER

Learned Advocate for the respondents submitted that they want to approach the Apex Court against the order passed by this Court, and for that purpose, the order passed by this Court may be stayed for a period of 8 days.

As against the aforesaid submissions, learned Special Public Prosecutor Mr. J.M. Panchal vehemently submitted that considering the nature of the order of remand passed by this Court, no stay be granted in the matter as the same would hamper the investigation and, therefore, the request for stay requires to be rejected.

Considering the rival submissions, the prayer made on behalf of the respondents deserves to be rejected, and the same is hereby rejected.