

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.
1 of 2022

In R/CRIMINAL APPEAL NO. 1121 of 2022

With

CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.
1 of 2022

In R/CRIMINAL APPEAL NO. 1128 of 2022

With

CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL) NO. 1 of 2022

In R/CRIMINAL APPEAL NO. 1178 of 2022

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MAHENDER SINGH SHERAVAT S/O DUNGARSINGH & ORS

Versus

STATE OF GUJARAT

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Appearance:

MR YOGESH LAKHANI SENIOR COUNSEL WITH MR NIMIT Y
SHUKLA(8338) & MR NANDISH H THACKAR &
MR A S TIMBALIA FOR THE PETITIONERS.

MR RC KODEKAR(1395) for the RESPONDENT(s) No. 2

MR TIRTHRAJ PANDYA APP for the RESPONDENT(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE S.H.VORA**

and

HONOURABLE MS. JUSTICE S.V. PINTO

Date : 05/05/2023

COMMON IA ORDER

(PER : HONOURABLE MS. JUSTICE S.V. PINTO)

1. By way of the captioned applications under section 389 of the Code of Criminal Procedure, the applicants- org. accused No.6-Mahender Singh Sheravat s/o Dungarsingh, org. accused No.1-Anoop Sood and org. accused No.5-Anil Kattundy Narayanan (hereinafter referred to as "A-6, A-1 and A-5" as per their original status in the trial) seek suspension of sentence imposed upon them by the judgment and order of conviction and sentence rendered on 10.05.2022 passed in C.B.I. S.C.

No.01/2016 by the learned Special Judge, CBI Court No.5, Ahmedabad. The applicants-org. accused are convicted for the offences punishable under Section 302, 331, 348 and 177 r/w Section 120B of Indian Penal Code and each of the appellant – accused are sentenced as under:

i) Imprisonment for life and fine of Rs. 10,000/- & in case of default in payment of fine amount simple imprisonment for 6 months for offence under Section 302 read with Section 120B of IPC.

ii) Simple imprisonment for 2 years and fine of Rs. 2000/- & in case of default in payment of fine amount simple imprisonment for 2 months for offence under section 331 read with section 120B of IPC.

iii) Simple imprisonment for 1 year and fine of Rs. 1000/- & in case of default in payment of fine amount simple imprisonment for 1 month for offence under section 348 read with section 120B of IPC.

iv) Fine of Rs. 500/- & in case of default in payment of fine amount simple imprisonment for 15 days for offence under section 177 read with section 120B of IPC .

2. The brief facts of the case of the prosecution as unfolded from the record are as under:

2.1 Shri Girija Rawat was serving as a cook in Air Force-I, Jamnagar and had put in service of 15 years approximately and in the year 1995, for 2 months he was working in DSC Messo Air Force - I, Jamnagar and was staying with his family in Air Force-I, Civilian Quarter No.89/1, Jamnagar. That on the night of 09/10.11.1995 a theft had taken place of 94 liquor bottles from CSD Canteen of Air Force Station, Jamnagar and as the Air Force Police was not competent to investigate the said theft case, as per the decision of the Air Force Authorities, Shri Ajitsinh Zala, Canteen Manager of CSD Canteen had lodged a written complaint dated 11-11-95 before the Jamnagar City 'B' Division Police Station which came to be registered as CR I No. 473/1995 u/s 457 and 380 of I.P.C. against unknown persons and the local police had taken up the investigation of the case.

2.2 On 13-11-95, Air Commodore Mr. K C. Phillipose, the then Air Officer Commanding of Air Force Station, Jamnagar issued an authority or Search in the name of MWO Mr. J S. Sidhu and party for conducting the search at the residential civilian quarter no. 89/1 of Shri G S. Rawat, Cook and to seize suspected illegal possession of liquor/Govt. Property. On the basis of the said Authority or Search, on 13-11-95 from 3-15 p.m. to 4-00 p.m. a Search was conducted by the Air Force Police at the residence of civilian cook Mr. Girija Rawat. Total 12 Air Force officials of different ranks, participated in the said Search and during the said Search, one broken glass bottle was seized from the outside compound of the residential quarter of Mr. Girija Rawat. Mr. Girija Rawat was brought to the Main

Guard Room by Air Force Police for further queries. Smt. Shakuntala Devi, wife of Mr. Girija Rawat had visited the Main Guard Room couple of times and requested to release her husband, however, the Air Force Officials had replied that Mr. Girija Rawat would be released after completion of interrogation and there was nothing to worry. On 14-11-1995 at around 00-15 hours, Mr. Girija Rawat was taken to SSQ, Jamnagar, however, the Duty Medical Officer of SSQ had checked Mr. Girija Rawat and declared him brought dead.

2.3 On 14-11-1995 early morning around 05-00 hours, the Orderly Officer had intimated Smt. Shakuntala Devi about the death of her husband Mr. Girija Rawat and had asked her to collect the body which was lying at Station Sick Quarter(SSQ). On 14-11-95 morning, the Officer-in-Charge, City 'B' Division Police Station, Jamnagar was intimated in writing by Station Security Officer mentioning accidental death of civilian cook Mr. Girija Rawat. On the basis of the above information and complaint lodged by Warrant Officer Mr. M Prasad, the local police registered Accidental Death case no.99/95 u/s 174 of Cr.P.C. and started investigation. Smt. Shakuntala Devi lodged FIR being CR I No.476/1995 before the local police on 14-11-95 itself against the therein named Air Force Officials of different ranks u/s 302, 331 and 114 of I.P.C. The P.M. Report of the deceased highlighted a number of internal and external ante-mortem injuries found on the body of Mr. Girija Rawat and the cause of death was mentioned as 'shock and hemorrhage on account of thoraco-abdominal injuries caused by hard and blunt objects.'

2.4 After investigation, Jamnagar City 'B' Division Police Station had filed Chargesheet vide No. 48/96 u/s 302, 331 and 114 of I.P.C. against total 7 accused persons namely Shri Rajesh Singh Kataria, Shri Mahender Singh Sherawat, Shri Anil Narayan Kathundi, Shri Satyendranath Chakrabarti, Shri Jaisingh Jogindersingh Siddhu, Shri Nirmal Kumar Majumdar and Shri Mahabir Prasad. Thereafter, the case was committed to the Ld. Sessions Court, Jamnagar and was registered as Sessions Case No. 28/1997. That A-5-Anil K N and A-6-Mahender Singh Sherawat filed a discharge application before the learned Sessions Court which was rejected and CR.RA No.407 of 1999 was filed before this Court which was allowed and both the applicants–accused were discharged for the offence punishable under Sections 304, 331 and 114 of the IPC by an order dated 12/10/2000. That the complainant–Shakuntaladevi Girija Rawat preferred SLP (Criminal) No.5448 of 2003 and by an order dated 14/07/2003 of Hon'ble Apex Court dismissed the said SLP on the ground of delay as well as merits.

2.5 Smt. Shakuntala Devi had preferred Special Criminal Application No. 674/2001 before the Hon'ble High Court with a main prayer for re-investigation and/or further investigation by C.B.I. of the case i.e. Sessions Case No.28/1997 erstwhile C.B.I. S.C. No..01/2016 pending in the Sessions Court, Jamnagar.

2.6 That, this Court vide judgement and Order dated 12-1-2012 passed in Sp.Cr. A. No. 674/2001 was pleased to direct Central Bureau of Investigation, Gandhinagar to further

investigate the case of death of Mr. Girija Rawat –Sessions Case No. 28/97 u/s 173(8) of Cr.P.C. and submit it's Report before the concerned Sessions Court, Jamnagar and pursuant to the order of this Court, C.B.I., Gandhinagar registered RC No. 0292012S0008 and carried out further investigation of the case. That the C.B.I. filed Supplementary Chargesheet in the matter against total 8 accused including one absconding accused for the offence punishable u/s 120-B r/w 302, 331, 348 and 177 of I.P.C. The Supplementary Chargesheet was filed in the Court of Ld. A.C.J.M., C.B.I. Court, Ahmedabad. This Court vide order passed in Cr.M.A.(For Direction) No.7215/2013 in Sp.Cr.A. No. 674/2001 granted liberty to C.B.I. to file an application for transfer of Sessions Case No.28/97 to the C.B.I. Court at Ahmedabad. Ld. A.C.J.M., C.B.I. Court No.1, Ahmedabad was pleased to pass an order on 8-8-2013 directing Registration of Chargesheet and issuance ofailable warrant upon the accused and making it returnable on 24-9-2013. The chargesheet copies with documents were supplied to the accused on the returnable date except absconding accused Mr. J S. Sidhu and a separate chargesheet was ordered to be filed against the absconding accused Mr. J S. Sidhu vide the order passed below Ex.101 by Ld. A.C.J.M., C.B.I. Court, Ahmedabad. Thereafter, the case was committed to the Court of Ld. Special Judge, C.B.I. Court, City Civil Court, Ahmedabad. On 19-9-2016, the then Ld. Special Judge, C.B.I. Court No. 5, Ahmedabad passed an Order directing registration of the case as C.B.I. Sessions Case and issuance of summons against the accused and accordingly, case came to be registered as C.B.I. Sessions Case No. 1/2016.

2.7 That, the Ld. 4th Additional Sessions Judge, Jamnagar was pleased to pass an Order on 4-3-2017 in Sessions Case No.28/97 directing transfer of Sessions Case No. 28/97 with complete record and muddamal to the C.B.I. Court No.5, Ahmedabad. An order came to be passed below Ex. 31 on 28-4-17 in C.B.I. Sessions Case No. 1/2016 whereby Sessions Case No.28/97 was directed to be merged with C.B.I. Sessions Case No. 1/2016 and the evidence was directed to be recorded in C.B.I. Sessions Case No. 1/2016.

2.8 Charge came to be framed against seven accused persons. Org. Accused No.3 Prasad expired during the pendency of Trial and hence the case against him stands abated.

3. The prosecution has examined in all 56 witnesses and also produced documentary evidence, so as to bring home the charge against the accused. In further statement recorded under section 313 of the Cr.P.C, the accused denied incriminating circumstances put to them and they further stated that a false case has been filed against them. A-5-Mr.Anil K N has further stated that his Superior Officer Mr.J S Sidhu had called him late night and had ordered him to take the person lying on the road to the hospital.

4. At the end of trial, the learned trial Court found the accused guilty for the aforesaid offences and convicted the applicants-org. Accused Nos.1, 5 and 6 as stated in paragraph 1 of this order while acquitting the org. accused No.2, 4 and 7 extending benefit of doubt to them.

5. Pending hearing of the appeal, the applicants have preferred the present applications for suspension of sentence, principally on the ground that the findings recorded by the learned Trial Judge are absolutely erroneous and illegal and there is no direct, indirect or circumstantial evidence brought by the prosecution agency to convict the applicants. It is further submitted that in the absence of cogent and reliable evidence, the judgment of conviction is recorded by the learned Special Judge, CBI Court No.5 and therefore, present applications may be considered.

6. Learned Counsel appearing for the CBI has opposed the present application and supported the findings recorded by the learned trial Court. He has further submitted that the learned trial Judge has not committed any error in appreciating the evidence of the witnesses and therefore, no case is made out to entertain the present applications.

7. Heard Learned Senior Counsel Mr.Yogesh S Lakhani assisted by Mr.Shukla and Mr.Thackar learned Advocates appearing for the respective applicants (A-6 and A-5) and learned Advocate Mr.A S Timbalia appearing for the applicant (A-1) and Mr. R C Kodekar, learned Counsel appearing for the CBI.

8. Learned Senior Counsel Mr.Lakhani has submitted that Air Commodore Mr.K C Philipose the then Air Commanding Air Force Station, Jamnagar issued an authority of search in the name of MWO Mr. J S. Sidhu and party for conducting a Search

at the residential civilian quarter no. 89/1 of Shri G S Rawat who was working as a Cook and accordingly a search was conducted on 13-11-95 from 3-15 p.m. to 4-00 p.m. and the party did not find anything except one broken glass bottle outside the residential unit and they brought Shri G S Rawat to the main guard room for further queries. That on 14-11-1995 at around 00-15 hours, deceased-Mr.Girija Rawat was taken to SSQ, Jamnagar where he was declared dead.

8.1 As per the evidence of the prosecution, A-5 and A-6 had taken the deceased to SSQ; but in the evidence of the prosecution, there is nothing to show that A-5 and A-6 were the members of search party or were on duty at the time of interrogation of deceased-Mr.Rawat. The learned trial Court has not considered the deposition of PW 6-Shakuntala Rawat; wherein even though in the examination-in-chief, she has named the A-5 and A-6; but during the cross-examination she has stated that she did not know the applicant-accused and their names were stated to her by neighbour Mr.R K Roy (Roydada). The said Mr.R K Roy (Roydada) has not been examined by the prosecution and the identity of the present applicants has not been established on record beyond reasonable doubt.

8.2 Moreover, the learned trial Court has relied upon the version of the complainant stating that her husband was taken on the government motorcycle by applicant-accused-Anil Narayanan; but in the deposition of PW 24-P C Rameshkumar; the witness has stated that he was on duty and also a member of the search party and he had gone to the house of civilian-

Mr.Girija Rawat and thereafter after the search was over as per the instructions of his Superior Officer, he had brought Mr.Girija on his scooter to the guard room. The presence of the applicants as members of the search party and at the guard room during the time when Mr.Girija Rawat was being interrogated is not established from the entire evidence adduced by the prosecution. Moreover, in the deposition of PW 6–Shakuntala Rawat; she has stated that she had gone at around 6:30 p.m. to the guard room and found her husband pacing in the gallery. Thereafter, one Mr.P Kumar had gone to the guard room and returned and told her that he had spoken to her husband and at that time it was at about 11:30 p.m.

8.3 As per the version of the prosecution, the presence of A-5 and A-6 is not proved, but the learned trial Court has heavily relied upon the fact that the applicants had brought the dead body of the deceased at SSQ in a condition where the deceased was not breathing and merely because A-5 & A-6 had taken Mr.G S Rawat to the SSQ has presumed their role in the offence. From the deposition of PW 24–P C Rameshkumar, it is come on record that on 13/11/1995 he was on duty from 1:00 p.m. to 7:00 p.m. in the said guard room and he was to be relieved by A-6; but A-6 did not come for duty and hence he had given charge to Sergeant – Shri Sukhdevsinh.

8.4 Learned Senior Counsel Mr.Lakhani has further submitted that the findings of the learned trial Court are erroneous and merely based on presumption and without any evidence, the learned trial Court has convicted the applicants

even though the prosecution has not proved the case beyond reasonable doubt. The only evidence against the applicants is that they had taken the deceased to the hospital and in the further statement recorded under Section 313 of the Cr.PC, the applicants have stated that they were called by their Superior Officer and instructed to take Mr.G S Rawat to the SSQ and as per the instructions, the applicants had taken Mr.G S Rawat to the SSQ.

8.5 That there is nothing on record to even minutely suggest that the applicants were part of the interrogation team and the evidence on record clearly establishes that the applicants were never part of the interrogation team or present at the time when Mr.G S Rawat was brought to the main guard room or thereafter.

9. Learned Advocate Mr.Timbalia appearing for the applicant-Anoop Sood (A-1) has submitted that PW 28 – Anbu Loganathan Savekar in her deposition has stated that she was a part of the search team and she left the guard room around 6:00 O'clock in the evening with the applicant and from her deposition, it has come on record that the applicant left the place around 6:00 p.m. in the evening and at that time deceased was fit and fine. This version is also supported by PW 6–Shakuntala Rawat who has stated that when she went to the guard room at around 6:30 p.m. she saw her husband was pacing up and down in the gallery and he was fit and fine. That in her deposition thereafter it has also come on record that even at 11:30 when one Mr.P Kumar had gone to the guard room he had spoken to Mr.Rawat

and at that time also the deceased was fit and fine.

9.1 In the entire evidence of the prosecution, from the deposition of PW 24–P C Rameshkumar who was also a member of the search team, it has come on record that he had brought Mr.Rawat on his scooter from his residence to the Main Guard Room and they had arrived to the office at around 4:00 p.m. and he had handed over Mr.Rawat to MWO Mr. J S. Sidhu. That even PW 12–Shankarlal Basul had stated in his deposition that he had gone to the guard room with Shakuntala Rawat wife of deceased and they had seen Mr.Rawat sitting outside and at that time Mr.Rawat asked for Pan Bidi and he had gone to Pan Bidi shop near the Cinema Hall and brought it and gave it to Mr.Rawat and at that time it was around 7:00 p.m. This proves that when the A-1 left the place at around 6:00 p.m. in the evening with PW 28–Anbu Loganathan, the deceased was fit and fine and thereafter met PW 12–Shankarlal and PW 6–Shakuntala Rawat wife of deceased Mr.Rawat. There is no evidence that the applicant had thereafter come back or that the applicant ever met the deceased after 6:00 p.m. i.e. after he left the place with PW 28 – Anbu Loganathan. That PW 44 - Jitender Kumar Singla has also deposed that he was with A-1-Anoop Sood from about 20:30 hours till 23:30 hours at night.

9.2 Learned Advocate Mr.Timbalia appearing for A-1 has submitted that the applicant was put under polygraphic test and even in that test, it was certified that applicant was completely unaware about the incident and he had never assaulted the deceased nor has instructed any of the staff to do so. The

learned Sessions Judge in the judgment has also observed that the applicant has never met the deceased after 6:00 pm and it is on record that the search authority was issued by Air Commodore KC Phillipose in favour of Mr.J S Siddhu. That the judgment is erroneous and even though there is no evidence on record A-1 has been convicted and hence the order of sentence be suspended and A-1 may be released on bail by imposing suitable conditions.

10. Learned Counsel Mr. Kodekar appearing for the CBI while opposing the captioned applications has mainly submitted that the applicants had no right to make any inquiry of a civilian and have no power to arrest or detain any civilian. He has submitted that the FIR of theft of 97 liquor bottles were registered with the Jamnagar City B-Division Police Station; but the applicant – accused–Anoop Sood insisted for search warrant and even after the search was carried the local police was never intimated about the same. He has further submitted that the search warrant was merely for the search of the house and not for detention of the suspect; however the raiding party illegally detained the deceased and kept him in the main guard room without any authority which act of the applicants is illegal. He has further submitted that the deceased was extracted confession about the theft of liquor bottles and the prosecution has proved that the applicants – Anil Narayanan and Mahender Sheravat had brought the deceased in the air force jeep to SSQ where he was declared dead at around 12:05 to 12:15 am. He has further submitted that the prosecution has proved that Mr.Rawat was brought to the said guard room for interrogation

and the external and internal injuries found on the body of the deceased have been proved from the deposition of PW 5 – Dr. Harimohan Mangal who has opined that the death was unnatural. He has further submitted that the applicants have not explained the injuries over the person of the deceased satisfactorily and these circumstances establish that in order to extract the confession regarding the theft of liquor bottles the deceased was kept in illegal custody and subjected to physical torture. Lastly, he has submitted that the learned Trial Judge has not committed any error in appreciating the evidence of the witnesses and therefore, no case is made out to entertain present application.

11. It is settled by the Hon'ble Supreme Court in various pronouncements that discretion under section 389 of Code of Criminal Procedure is to be exercised judiciously and the Appellate Court is obliged to consider whether cogent ground has been disclosed, giving rise to substantial doubts about the validity of the conviction and there is likelihood of unreasonable delay in disposal of the appeal, the Appellate Court is only to examine if there is such patent infirmity in the order of conviction that renders the order of conviction prima facie erroneous. It is also settled by the Hon'ble Supreme Court that where there is evidence that has been considered by the Trial Court, it is not open to the Court considering the application under section 389 to re-assess, re-examine and/or re-analyze the same evidence and take a different view to suspend the execution of the sentence and release the convict on bail. In nutshell, following factors before grant of bail are required to be

considered :-

- (i) Nature of accusation, severity of punishment in case of conviction and nature of supporting evidence.
- (ii) Reasonable apprehension of tampering with the evidence and apprehension of threat to the complainant.
- (iii) Prima facie satisfaction of the Court in support of the charge.

11.1 The Hon'ble Apex Court in ***Omprakash Sahni vs. Jai Shankar Chaudhary & Anr., Etc.***, in Criminal Appeal Nos.1331-1332 of 2023 has held as under:

“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick

up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

12. At the outset, it is required to be noted that pending trial, the applicants-accused were on bail and there is no breach reported against any of the applicants-accused. It is also required to be noted that the first charge-sheet which was filed against seven accused persons for the offence registered at Jamnagar City B-Division Police Station being I-CR No.48 of 1996 did not disclose the involvement or the name of A-1-Anoop Sood and A-5-Anil K N and A-6-Mahender Singh Sheravat had preferred a discharge application before the learned Sessions Judge which came to be rejected and thereafter both the applicants were discharged by the order dated 12/10/2000 passed in CR.MA No.407 of 1999. That this order was challenged by the original complainant- Shakuntaladevi Girija Rawat in SLP (Criminal) No.5448 of 2003 and by an order dated 14/07/2003 the Hon'ble Apex court dismissed the said SLP on the ground of delay as well as on merits. That the prosecution suppressed this fact from the learned trial Court and even though the proceedings of discharge had concluded and attained finality on merits before the Hon'ble Apex Court against A-5 and A-6, the same was not considered by the learned Sessions Court.

13. We have carefully considered the submissions made at bar and thoroughly examined the oral as well as documentary evidence adduced before the learned trial Court and keeping in mind the ratio laid down by the Hon'ble Apex Court in the case of *Omprakash Sahni (supra)*, we find that FIR being I-473/1995

punishable under Sections 457 and 380 of the IPC was lodged by PW 19 – Ajitsinh Kanubha Zala, Canteen Manager for the theft of 94 bottles of liquor. As per case of the prosecution, a search was carried out at the residence of Mr.Girija S Rawat and as per the document produced at Exh.550 which is a photocopy of one sheet of the search book MWO J S Sidhu (absconding), Squadron Leader Anoop Sood (A-1), Ms Anbu Lognathan (PW 28), MWO S N Chkraborty (A-2 acquitted by giving benefit of doubt), WO M Prasad (A-3 abated), JWO Manjit Singh, JWO J H Pandey (PW 34), Sergeant N K Majmudar (A-4 acquitted by giving benefit of doubt) Sergeant N C Mukhopadhyaya (PW 27), Sergeant M N Chikara (PW 24) and Corporal R S Kataria (A-7 acquitted by giving benefit of doubt) were the members of the search party. That during the search one broken glass bottle was found from outside the compound of the residential unit of Mr.Girija Rawat and he was brought to the main guard room. That Mr.Girija Rawat was taken to the Station Sick Quarter (SSQ) on 14/11/1995 at 00:15 hours and he was declared dead by PW 55–Dr. Yamuna Mundade who has deposed that A-5 and A-6 brought the dead body of Mr.Girija Rawat to the SSQ. The FIR for the said offence was registered by PW 6 Shakuntala Girijasing Rawat and in her deposition she names the present applicants alongwith others who had come to search her house and has also stated that A-5 had taken her husband on the government motorcycle. During the cross-examination, the witness has stated that she did not know the names of the accused and her neighbour Mr.R K Roy had told her their names. It is pertinent to note that as per the deposition of PW 6, her neighbours–Roydada, Tulsibhai, Shambhubhai, Haridas

Mohanbhai, etc., had gathered but Roydada the person who had told the identity of the accused to the witness has not been examined by the prosecution. As per the evidence of PW 24 – P C Rameshkumar, PW 25 – Maheshpal Nirankarsinh Chikara, PW 27 – Nimaichandra Upendranath Mukhopadhyay, PW 28 – Anbu Loganathan Savekar and PW 34–Jawaharlal Harsevak Pandey who all were members of the search party, A-6 and A-5 were not with them at the time of the search at the house of Mr.Girija Rawat and A-5 did not bring Mr.Girija Rawat on his motorcycle to the Main Guard Room. PW 24–Sergeant P C Rameshkumar has categorically stated he had brought Mr.Girija Rawat on his scooter after the search was over as per the instructions of Mr.J S Sidhu and had reached the Main Guard Office at 4:00 p.m. and he had handed over Mr.Girija Rawat to Mr.J S Sidhu. As per the Panchnama produced at Exh.211, the weapons like sticks and uniform belt were sized as per the say of Mr.J S Sidhu and not from any of the applicants.

13.1 PW 6-Shakuntala Girijasing Rawat has also deposed that she had gone to the Guard Room at 6:30 p.m. and saw her husband pacing up and down in the outside gallery. PW 12–Shankarlal Durjanlal Basur has also deposed that he and PW 6–Shakuntala had gone to the Guard Room at around 7:00 p.m. and at that time Mr.Girija Rawat was sitting outside and he had asked for Pan-Bidi and the witness has gone to the Pan-Bidi shop near the Cinema and got Pan-Bidi and given to Mr.Girija Rawat and at that time he was fit and fine. PW 6–Shakuntala has also deposed that P Kumar had gone to meet her husband around 10:00 p.m. and at that time her husband was fit and fine

and he had not complained anything to Mr.P Kumar. That none of the witnesses have deposed about the presence of the applicants at the Main Guard Room or that the applicants were interrogating Mr.Girija S Rawat in the Main Guard Room.

13.2 In the deposition of PW 28–Anbu Loganathan who was a member of the search party at the house of Mr.Girija S Rawat, it has come on record that after relieving from the search, she went back to her duty from the Main Guard Room and at that time A-1 came to drop her. This prima facie shows that A-1 had left the Main Guard Room and thereafter PW 44 – Jitender Kumar Singala has deposed that after completion of duty, he went home and he went for a walk with his wife and saw A-1 and his wife in the lawn in front of their house and they joined them for dinner and were with them from 20:30 hours to 23:30 hours.

13.3 PW 24 - P C Rameshkumar has deposed that he was on duty at the Sub Guard Room from 1:00 p.m. to 7:00 p.m. on 13/11/1995 and A-6-Corporal Sherawat was to relieve him but he did not turn up so he gave the charge to Sukhdevsinh. Hence in the entire evidence, there is nothing on record to show the presence of the A-5 and A-6 near the Main Guard Room or on duty on 13/11/1995. Moreover the evidence proves that A-1 had left at around 6:00 p.m. and was with PW 44 Jitender Kumar Singla till 23:30 hours. The Investigating Officer PW 56 - Rabi Narayan Tripathy has also admitted that during investigation it was revealed that A-1 had left the Main Guard Room at around 6:00 p.m. on 13/11/1995.

13.4 The prosecution has also produced the evidence of PW 51 – Amita Dipesh Shukla and the witness is the Deputy Director who has conducted the polygraphy test of A-1 and the report of the polygraphy test is produced at Exhibit-414. As per the say of the witness, after analysis and evaluation of the polygraphy, it was opined that A-1 had not physically assaulted Mr.Girija Rawat and had not instructed any staff to do so. Moreover, A-1 had given his consent for the polygraphy test and it has also come on record that Mr. J S Sidhu and Mr.R C Shukla were monitoring the investigation. In the entire evidence, there is no prima-facie evidence to show that the applicants had the custody of Mr.Girija Rawat at any time prior to his being taken to hospital on 14/11/1995 at 00:15 hours. The evidence against A-5 and A-6 is that they had taken Mr.Girija Rawat to the SSQ and at that time he was found dead; but in the further statement recorded under Section 313 of Cr.PC in question No.209, the learned trial Court had put the question regarding the taking of the body by A-5 and A-6 in the Air Force Jeep to which it is stated that they had done so under orders from Mr.J S Sindhu.

13.5 The accused have been sentenced for the offence under Section 313, 348 and 177 read with Section 120-B of the IPC; but there is no evidence to show the presence of the applicants at the Main Guard Room and no witness who deposes that they have seen the applicants near the Main Guard Room trying to exhort confession from Mr.Girija Rawat to compel restoration of the liquor bottles or that the applicants had confined Mr.Girija Rawat in the Main Guard Room. There is no

evidence as to the meeting of minds of the applicants along with the other co-accused at any point of time to suggest any conspiracy and in the absence of any evidence, the judgment of the trial Court suffers from patent infirmities and the findings are erroneous and based on presumptions and assumptions. Even, at the cost of repetition, we may say that without re-examining and re-analyzing the evidence, we find that the order of conviction and sentence recorded on the basis of assumption and presumptions inconsistent with the evidence on record seems prima facie erroneous and warrants an order of suspension of sentence and grant of bail to the applicants – A-6, A-1 & A-5.

14. Having considered the aforesaid relevant material adduced on record and considering the discussions made herein above, prima facie, we find that as per the case presented by the prosecution and accepted by the learned trial court, the applicants stand a fair chance of acquittal and the conviction recorded under sections 302, 348, 177 read with Section 120-B of IPC is apparently erroneous and the conviction may not be sustainable and therefore, we deem it fit to allow the present applications, pending hearing of conviction appeal by imposing suitable conditions. Accordingly, the following order is passed.

15. The judgment and order of sentence rendered on 10.05.2022 in C.B.I. S.C. No.01/2016 by the learned Special Judge, CBI Court No.5, Ahmedabad is hereby suspended and the applicants- org. accused Nos.A-6, A-1 and A-5 are ordered to be released on bail, pending hearing of the appeal on furnishing

bail bond of Rs.50,000/- each and surety of like amount each to the satisfaction of the learned Sessions Court concerned and on further following conditions:

(a) The applicants shall not leave the limits of India till final disposal of the appeal.

(b) The applicants shall surrender their passports, if any, within 3 days from today before the concerned Sessions Court and if they do not hold a passport, they shall file affidavits before the Sessions Court concerned to that effect.

(c) The applicants shall not involve themselves in any criminal activity while on bail or attempt to contact any prosecution witnesses.

(d) The applicants shall attend hearing of the appeal regularly as and when it is fixed and further mark their presence on 1st day of every Month before the concerned Police Station between 11.00 am to 2.00 pm till appeal is finally disposed of.

(e) The applicants shall furnish their address of residence to the concerned police station and shall not change the same without prior permission of this Court till final disposal of appeal.

16. It is made clear that if any of the aforesaid conditions is breached by the applicants accused, the State is at liberty to file application for cancellation of bail before this Court. The applicants are ordered to be released on bail forthwith if not required in any other offence.

17. Accordingly, the present applications are allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(S.H.VORA, J)

(S. V. PINTO,J)

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