

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 499 of 2018
With
R/CRIMINAL APPEAL NO. 603 of 2021
With
R/CRIMINAL APPEAL NO. 880 of 2019
With
R/CRIMINAL APPEAL NO. 854 of 2021

=====

RAMESHBHAI BHAGWANBHAI JADAV
Versus
THE STATE OF GUJARAT & 1 other(s)

=====

Appearance in Criminal Appeal No. 499 of 2018:

MR HARSHIT S TOLIA(2708), for the Appellant(s) No. 1
MS MEGHA JANI(1028) for the Opponent(s)/Respondent(s) No. 2
MR L B DABHI, APP for the Opponent(s)/Respondent(s) No. 1

Appearance in Criminal Appeal Nos. 603 of 2021 and 854 of 2021:

MR B.M. MANGUKIYA, ADVOCATE for the Appellants
MS MEGHA JANI(1028) for the Opponent(s)/Respondent(s) No. 2
MR L B DABHI, APP for the Opponent(s)/Respondent(s) No. 1

Appearance in Criminal Appeal No. 880 of 2019:

MR R J GOSWAMI, ADVOCATE for the Appellant(s) No. 1
MS MEGHA JANI(1028) for the Opponent(s)/Respondent(s) No. 2
MR L B DABHI, APP for the Opponent(s)/Respondent(s) No. 1

=====

CORAM: HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 25/07/2022
COMMON ORAL ORDER

1. Heard learned Advocate Mr. Harshit S. Tolia on behalf of the appellant in Criminal Appeal No. 499 of 2018, learned Advocate Mr. B.M. Mangukiya on behalf of the appellants in Criminal Appeal Nos. 603 of 2021 and 854 of 2021, learned Advocate Mr. R.J. Goswami on behalf of the appellant in Criminal Appeal No. 880 of 2019, learned APP Mr.L.B. Dabhi for the respondent-State and learned Advocate Ms. Megha Jani for the respondent No.2- first informant in all these matters.

2. These appeals are filed by the appellants, under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with Section 439 of the Code of Criminal Procedure, 1973, for being released on regular bail in connection with **F.I.R.** registered as **C.R.-I No.127 of 2016 on 11.07.2016 with Una Police Station, District Gir Somnath**, for the offences punishable under Sections 307, 397, 395, 365, 355, 354, 342, 147, 148, 149, 324, 323, 504, 506(2), 120(B), 201, 166A, 167, 466, 177, 204, 294(b), 505(1)(b), 509, etc. of the Indian Penal Code; Sections 135 of the Gujarat Police Act; Sections 3(1)(e),(r),(s),(u), 3(2)(5a), 3(1)(d), 3(1)(za)(E), 3(1)(w)(i),(ii), 3(2)(vi), 3(2)(vii), 4 etc. of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Sections 66A and 66B of the Information Technology Act.

3. Apart from the role attributed to the appellants, as coming out from the FIR and the charge-sheet, the only difference while considering the case of the appellants for regular bail, would be the fact that the appellants of Criminal Appeal No. 499 of 2018 and Criminal Appeal No. 854 of 2021, have preferred the appeals for second time, hence they are successive appeals, more particularly the said appellants having approached this Court in the year 2017 and learned Co-ordinate Bench of this Court having permitted the said appellants to withdraw the said appeals with liberty to file fresh appeals if the trial does not commence within a reasonable time period. Insofar as the other appellants i.e. the appellants in Criminal Appeal Nos. 603 of 2021 and 880 of 2019 are concerned, the said appeals have been filed by them for the first time seeking to be released on regular bail.

4. Learned Advocates on behalf of the respective appellants would submit the incident in question, had happened on 11.07.2016 and whereas the FIR was filed on very same day and there appellants were also arrested on the very next day i.e. on 12.07.2016. Learned Advocates would submit

that the Investigating Officer had filed the charge-sheet within stipulated period and whereas the trial has also commenced. It is further submitted that having regard to the fact that the appellants are in custody for more than 06 years and considering that the investigation had completed long back and whereas now the trial has also started, this Court may consider releasing the present appellants on regular bail. It is also submitted by the learned Advocates for the appellants that while the role attributed to the appellants as coming out from the FIR and the charge-sheet being that the present appellants were the principal perpetrators of the alleged crime in question and whereas it is submitted by learned Advocates in this behalf that allegations are of committing offence under the Indian Penal Code as well as under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. It is submitted that the most serious offence under the Indian Penal Code being offence punishable under Section 307, and whereas while there may not be any such injuries, which may have been caused by the present appellants to the victims, which would correspond to the alleged offence, but in any case, it is submitted that since the said offence envisages maximum imprisonment for a period of 10 years and considering that more than half of the maximum possible sentence has been spent by the appellants in prison, therefore this Court may consider releasing the present appellants on regular bail. The same arguments have been reiterated by the learned Advocates insofar as the offence punishable under Section 395 of the IPC, which also carries a maximum possible sentence of 10 years. Insofar as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is concerned, it is submitted by the learned Advocates that the allegation against the appellants is of having committed an offence under Sections 3(2)(vi) and 3(2)(vii) and whereas since the offences envisage maximum punishment of 05 years, which period having already undergone by the appellants, therefore also the appellants may be released on regular

bail. It is further submitted by the learned Advocates that a total of 41 persons were named as accused and of the said 41 accused, except the present 04 appellants, all other accused have been released on regular bail. It is further submitted that in case of one of the accused Nagjibhai Dayabhai Vaniya (Aahir), who is shown as accused No.3 in the charge and who is stated to have played a role as similar to the present appellants, his case had been considered and the said accused had been released on regular bail by the learned Co-ordinate Bench of this Court, vide order dated 21.10.2020, and therefore also on the ground of parity the present appellants may be released on regular bail by this Court. Learned Advocates would submit that while it is true that the trial has commenced, but at the same time it would also be worth mentioning that none of the material witnesses have been examined by the learned Trial Court and whereas it is submitted that inspite of attempts by this Court and the learned Designated Court to expedite the trial, for various reasons, the trial has not moved at a reasonable pace. It is also submitted by the learned Advocates that learned Special Public Prosecutor appointed by the State has not remained present for number of occasions and the same also contributing to the trial not being concluded. Having regard to the same, learned Advocates would submit that this Court may consider and release the appellants on regular bail and whereas the appellants being ready and willing to comply with any stringent conditions that may be thought fit and appropriate by this Court.

5. These appeals have been vehemently opposed by learned APP Mr. Dabhi appearing on behalf of the respondent-State. Learned APP Mr. Dabhi would submit that the FIR in question would show the allegations of very serious crime having been committed by the accused and whereas the present appellants are, as per the FIR and the investigation papers, the principal perpetrators of the said crime in question. It is submitted that ample evidence have been collected by the Investigating Officer in form of

statements, CCTV Footage etc. which would show that the appellants have prima facie committed the crime in question. Learned APP would further submit that long period of imprisonment undergone during the trial is not one of the relevant considerations which may appeal to this Court, more particularly such a consideration not being stated by the Hon'ble Apex Court in number of judgments where the criteria that should be followed by this Court while considering bail application is laid down. Learned APP would further submit that while the learned Special Public Prosecutor may not have been present on few occasions before the Trial Court, more particularly for some valid reasons and whereas in case the trial not been concluded at the earliest is the grievance of the appellants, then this Court may direct the learned Designated Court to expedite the trial proceeding and the Government would ensure cooperation from the Special Public Prosecutor and all others concerned. Having regard to the same, learned APP would submit that these appeals may not be considered by this Court.

6. The present appeals have also been vehemently opposed by learned Advocate Ms. Megha Jani appearing on behalf of the first informant. Learned Advocate Ms. Jani while reiterating the submissions made by learned APP, would submit that the crime in question is very serious. Learned Advocate would submit that apart from the assault on the first informant and the victims, it also appears from the investigation that the appellants were part of the a conspiracy whose aim went beyond causing the injuries and humiliation to the first informant and the victims. Learned Advocate would submit that in addition to the victims being assaulted at the place of the first incident, the victims were bundled into the vehicle of one of the appellants who already had weapons including sticks etc. placed in his vehicle and whereas the victims were paraded at different places and during such time the victims were being continuously thrashed merciless. It is submitted that the crime apart from being one against the victims, the entire

idea was to create feeling of terror among certain communities. Having regard to the same, learned Advocate Ms. Jani would submit that this Court may not exercise discretion in favour of the appellants. It is further submitted by learned Advocate Ms. Jani relying upon the decision of the Hon'ble Apex Court in case of **Anil Kumar Yadav Vs. State (NCT of Delhi) and Another**, reported in (2018) 12 SCC 129, that in addition to the nature of allegation and seriousness of the offence which being one of the relevant considerations which would be weigh with this Court while considering application for grant of regular bail, one of the other relevant considerations being that the impact of release of the accused on bail on the prosecution witnesses and its impact of the society. Learned Advocate would further submit relying upon the very same decision that the Hon'ble Apex Court has inter alia observed that while the applicants before the Hon'ble Apex Court were undertrial and their liberty is a relevant consideration, but it is equally important to consider the impact of their release on the prosecution and on the society. Learned Advocate relying upon the observations of the Hon'ble Apex Court would submit that impact of the release of the appellants on the prosecution witnesses as well as on the society at large would be considered by this Court, more particularly according to the learned Advocate, nature of the offence being such, releasing the appellants would instill fear in the minds of the prosecution witnesses.

6.1 Learned Advocate Ms. Jani would also rely upon the decision of the Hon'ble Apex Court in case of **Vijaykumar Radheshyam Ramshvrup Agraval Vs. State of Gujarat**, reported in 2016 SCC OnLine Gujarat 2266, and would submit that in the said decision in case of successive bail application, more particularly in context of long period of incarceration undergone by the applicants therein, the learned Co-ordinate Bench of this Court had inter alia observed that while dealing with an application for successive bail, delay alone should not be the ground for exercising

discretion and whereas the offence, methodology and the aftermath would also be required to be examined in proper perspective.

6.2 Learned Advocate Ms. Jani would also submit in this regard that two of the appellants referred to hereinabove having approached this Court earlier and this Court having permitted withdrawal of appeals if trial does not commence and since trial has commenced which is an admitted position, therefore the exigency for which liberty had been granted no longer existing, the said appellants are not entitled to grant of regular bail. Learned Advocate Ms. Jani would rely upon the decision of the **High Court of Bombay (Nagpur Bench)** in case of **Shivchand Somaji Khandake Vs. State of Maharashtra and Others**, reported in MANU/MH/2970/2018, wherein the learned Single Judge of the Bombay High Court has inter alia observed that since the condition for which liberty had been granted did not exist, the successive bail application could not be considered. Learned Advocate Ms. Jani would submit that the said decision had also not been interfered with by the Hon'ble Apex Court in Special Leave to Appeal (Cri) No. 44 of 2019 vide order dated 15.01.2019. Having regard to the same, learned Advocate Ms. Jani would submit that this Court may not exercise discretion in favour of the present appellants and may dismiss the appeals.

7. As against the said submissions, learned Advocates for the appellants would submit that insofar as the aspect of successive bail is concerned, in case of accused Nagjibhai Dayabhai Vaniya (Aahir) referred to hereinabove, the said accused had also approached this Court earlier and whereas even the appeal of the said accused had been permitted to withdraw with the same liberty and whereas inspite of the same, in the successive appeal, the learned Co-ordinate Bench of this Court vide order dated 21.10.2020 referred to hereinabove had been pleased to release the said accused on regular bail and whereas the said order having not been interfered by the

Hon'ble Apex Court. It has been submitted by the learned Advocates for the appellants that it would be the said decision which would be precedent which may be followed by this Court and not the decision of Hon'ble Judge of a different High Court which would only have a persuasive value. Learned Advocates would further submit that while the allegation against the present appellants is inter alia for having committed offence punishable under Section 307 of the IPC, the allegation further is that the present appellants had assaulted the victims for over three hours. It is submitted by the learned Advocates that had there been any intention to kill the victims, the same could have been done within almost three hours time span and whereas considering the same it could be safely presumed that the present appellants did not have any intention to kill the victims. Having regard to the same, learned Advocates for the appellants would request that this Court may release the present appellants on regular bail.

8. Having regard to the submissions made by learned made by learned Advocates, more particularly the submission that the learned Special Public Prosecutor appearing before the trial Court has not remained present for large number of dates before the Trial Court, this Court has called upon the learned APP Mr. Dabhi to supply the record of proceedings with regard to the trial. From the record of proceedings tendered by the learned APP, it appears that the learned Special Public Prosecutor has not remained present for number of occasions, more particularly in the present year and whereas it also appears that the Additional District and Sessions Judge, Veraval has also issued notice to the Additional Public Prosecutor to remain present.

9. This Court, having considered the submissions made by learned Advocates for the respective parties and having considered the documents on record as well as investigation papers, has considered the following relevant aspects:-

[1] The fact that the appellants are not alleged to have committed any offence which would be punishable by life imprisonment or by death.

[2] The Hon'ble Apex Court in case of **Anil Kumar Yadav (supra)** has inter alia set out the relevant considerations while considering an application for grant of regular bail and whereas this Court is in prima facie agreement with learned Advocate Ms. Jani for the first informant that the primary consideration that should weigh with this Court is the nature of seriousness of the offence, which would be a factor that might go against the appellants herein, but at the same time, this Court, having regard to the fact that the appellants have undergone pre-conviction imprisonment for almost six years, exercises its discretion in favour of the appellants.

[3] It is required to be considered that the most serious offence under the Indian Penal Code as alleged against the appellants being offence punishable under Sections 307 and 395, having punishment of maximum 10 years of imprisonment and whereas the appellants have undergone under-trial imprisonment for more than half of the maximum possible sentence.

[4] That the period of under-trial imprisonment for offence punishable under Section 3(2)(vi) and 3(2)(vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act i.e. for a period of 05 years has already undergone by the present appellants.

[5] Having regard to the fact that the appellants have already undergone six years under-trial imprisonment, in the considered

opinion of this Court, there may not be any negative impact on the society and whereas insofar as the prosecution witnesses are concerned, any apprehension of negative impact upon them could be allayed by imposing reasonable conditions upon the appellants.

[6] The fact that while there were 41 accused persons, except the present appellants, all other accused have been released on bail.

[7] The accused namely Nagjibhai referred to hereinabove, who has played almost similar role to the role attributed to the present appellants, having been released by the learned Co-ordinate Bench of this Court in October, 2020, therefore on the ground of parity, the appeals of the present appellants deserves consideration. The fact that even in case of the said accused, the order of withdrawal of his first bail appeal, inter alia granted the same liberty as granted to the appellants of Criminal Appeal No. 499 of 2018 and Criminal Appeal No. 854 of 2021 and whereas inspite of the same, while considering the successive bail appeal, the learned Co-ordinate Bench had deemed it appropriate to release the said accused on regular bail and the said order not being interfered with by the Hon'ble Apex Court vide order dated 13.01.2021 in Special Leave to Appeal (Cri.) No. 6730 of 2020.

[8] That the trial does not appear to have progressed substantially, more particularly since all material witnesses are yet to be examined.

[9] This Court has taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra v. Central Bureau of Investigation reported in [2012] 1 SCC 40.**

10. In the facts and circumstances of the case and considering the nature of the allegations made against the appellants in the First Information Report, without discussing the evidence in detail, prima facie, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the appellants on regular bail.

11. Having regard to the above aspects taken into consideration by this Court, in the considered opinion of this Court, the appellants have made out a case for being released on regular bail and whereas considering the nature of allegations and seriousness of the offence, to ensure that the first informant and the victims can depose, without any apprehension or fear, in the trial Court, in the considered opinion of this Court, appropriate conditions are required to be imposed upon the appellants. Furthermore, in the considered opinion of this Court, directions are also required to be issued to ensure that the trial in question is concluded at the earliest.

12. Hence, the present appeals are allowed. The appellants are ordered to be released on bail in connection with **F.I.R.** registered as **C.R.-I No.127 of 2016 on 11.07.2016 with Una Police Station, District Gir Somnath**, on executing a bond of Rs.25,000/- (Rupees Twenty Five Thousand only) each with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that they shall;

- [a] not take undue advantage of liberty or misuse liberty;
- [b] not act in a manner injuries to the interest of the prosecution;
- [c] not in any manner attempt to influence the first informant and the victims or the witnesses;
- [d] surrender passports, if any, to the lower court within a week;

[e] not leave the State of Gujarat without prior permission of the Sessions Judge concerned;

[f] furnish the present address of residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of the Trial Court concerned;

[g] not enter in the limits of District Gir-Somnath till the deposition of the first informant and the victims are over, except for the purpose of attending the Trial Court;

[h] shall also furnish the address of residence outside District Gir Somnath, where they would be residing during the said period, to the I.O. and also to the Trial Court at the time of execution of the bond and shall not change the residence without prior intimation to the Trial Court concerned;

[i] mark their presence twice in a month, on every first and third Monday till the deposition of the first informant and the victims are over, at the nearest Police Station of their place of stay, when they would be staying out of District Gir Somnath, the nearest police station to be decided by the learned Trial Court.

13. The Authorities will release the appellants only if they are not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matters.

14. Bail bond to be executed before the lower court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions in accordance with law.

15. At the stage of trial, the trial court shall not be influenced by any observations of this Court which are of preliminary nature made at this stage, only for the purpose of considering the appeals of the appellants for being released on regular bail.

16. The appeals are allowed in the aforesaid terms. **Direct service is permitted.**

17. Learned Advocate Ms. Jani for the first informant and learned APP for the respondent-State have requested this Court to stay the present order for a period of 04 weeks. Considering that this Court by way of the present order has directed to release of the present appellants on regular bail and since issue concerns the liberty of the appellants, such request is not entertained.

FURTHER ORDER

The State of Gujarat through the Secretary, Legal Department, shall be joined as respondent No.3 by the Registry and let **Notice** be issued to the respondent No.3 - Secretary, Legal Department, returnable on **05.08.2022**. Learned APP waives service of notice on behalf of the respondent No.3.

By the returnable date, the Secretary, Legal Department, State of Gujarat, shall make appropriate arrangement for conclusion of the trial and if the State intends to retain the same learned Public Prosecutor, then the State shall ensure that the learned Special Public Prosecutor remain present before the learned Sessions Court on each and every date, except in case of any unforeseen emergency and whereas the Secretary, Legal Department shall assure cooperation by the Special Public Prosecutor i.e. either the present Special Public Prosecutor or any other Special Public Prosecutor as may be appointed by the State.

The Registry shall call for the details form the Trial Court with regard to the witnesses yet to be examined and whereas the learned Sessions Court shall suggest an appropriate timeline for completion of the trial, in case of the parties concerned would co-operate and the trial being adjourned only on weekly basis. Such report shall be placed for consideration of this Court on the next date of hearing.

A copy of this order shall be given to the learned APP for appropriate onwards communication.

BDSONGARA

(NIKHIL S. KARIEL,J)

