

RAVINDERSINGH @ RAVI PAVAR

v.

STATE OF GUJARAT

(Criminal Appeal No. 334 of 2013 etc.)

FEBRUARY 22, 2013

[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

Code of Criminal Procedure, 1973:

s.439(1) read with Art.136 of the Constitution – Bail –
Hooch tragedy – A large number of persons died and other
suffered serious physical injuries by consuming country made
liquor containing ethyl and methyl alcohol – Held: The
materials placed on record prima facie establish that the
appellant was not a mere supplier of spurious alcohol but he
was involved in the criminal conspiracy of manufacturing
spurious liquor along with the main accused and selling the
same at various places through his men – Besides, the
appellant is a habitual offender and is facing several similar
cases – There is every likelihood that if the accused/appellant
is released on bail, he would threaten the witnesses and again
indulge in sale of spurious liquor – Therefore, the appellant
is not at all entitled to bail at this stage – The record reveals
that respondent in the other appeal is a prime conspirator and
had indulged in illegally supplying ethyl and methyl alcohol
to main accused for manufacturing country made liquor –
Further, the respondent is a habitual offender – There are
several cases pending against him – He has also abused the
bail granted to him in a different case – Taking note of all the
aspects, the antecedents of the respondent, the gravity and
nature of offence, loss of human lives, the impact on the social
fabric of the society, his continuous involvement in criminal
activities while on bail, the Court is satisfied that the
respondent does not deserve to continue to remain on bail –

A *Accordingly, the judgment and order passed by High Court granting him bail is set aside – Constitution of India, 1950 – Art. 136.*

B The appellant in Crl. A. No. 334 of 2013 and the
 B respondent in Crl. A. No. 335 and 336 of 2013 were
 charged with various offences punishable under the
 Penal Code, 1860 and Bombay Prohibition Act, 1949, in
 the case relating to the hooch tragedy which resulted in
 death of 147 persons and serious physical injuries to 205
 C others after consuming spurious country made liquor
 containing poisonous chemical methyl alcohol which
 was manufactured and supplied by accused persons.
 The application for bail filed by the appellant in Crl. A. No.
 334 of 2013 was rejected whereas the bail applications
 of the respondent in Crl. A. 335 and 336 of 2013 were
 D allowed by the High Court.

Disposing of the appeals, the Court

E HELD: 1.1 Normally, while considering the
 application for bail, it is not necessary for the court to
 assess the materials placed by either side, discuss and
 arrive at a definite conclusion. However, taking note of
 the gravity of the offence, this Court has to deal with
 those aspects confining to the disposal of the bail
 F application. [para 11] [1121-D-E]

G 1.2 In a State having prohibition policy, supply of raw
 material for liquor, its production and distribution are
 illegal. It is a matter of common knowledge that if any one
 consumes liquor manufactured out of ethyl/methyl
 alcohol, it would have very adverse effect on the body
 which can cause death or bodily injury as is likely to
 cause death. [para 26] [1127-G-H; 1128-A]

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Crl. Appeal No. 334 of 2013

2.1 A perusal of the reasoning of the High Court as well as the materials placed by the prosecution *prima face* establish that the appellant was not a mere supplier of spurious alcohol but he was involved in the criminal conspiracy of manufacturing spurious liquor along with the main co-accused (A-1) and selling the same at various places through his men. The statements of various persons support the greater role played by the accused/appellant. [para 14] [1123-A-B]

2.2 It has also been brought to the notice of the Court that the appellant is a "habitual offender" and is facing more than 20 cases including similar cases under the various provisions of IPC and the Bombay Prohibition Act, 1949. It is further pointed out that there is every likelihood that if the accused/appellant is released on bail, he would threaten the witnesses and again indulge in sale of spurious liquor. The appellant cannot claim parity with other accused in claiming bail. Therefore, the appellant is not at all entitled to bail at this stage and the High Court has rightly denied him bail. [para 15, 16-17] [1123-E-G; 1124-C]

Crl. Appeal Nos. 335 and 336 of 2013

3.1 It is highlighted by the prosecution that during the course of investigation, it has been revealed that the respondent (A-2) is a prime conspirator and had indulged in illegally supplying ethyl and methyl alcohol to A-1 for manufacturing country made liquor. Because of the conduct of A-2 in supplying ethanol and methanol to A-1 for preparation of spurious liquor, several casualties and injuries were resulted. The High Court, in a casual way, has concluded that since the business of A-2 was looked after by his nephew and he also disposed of his petrol pump, A-2 cannot be blamed. It is not a valid ground for

A enlarging the accused on bail. [para 19 and 23] [1124-H; 1125-A; 1127-A-B]

B 3.2 The State has highlighted that A-2 is a “habitual offender” and there are 22 cases pending against him in various police stations. It is also mentioned that during the period while he was granted temporary bail by the High Court, he indulged in an offence of theft and a case was registered against him u/s 379 of IPC for which he was arrested and later enlarged on bail. Taking note of all the aspects, the antecedents of the respondent, the gravity and nature of offence, loss of human lives, the impact on the social fabric of the society, his continuous involvement in criminal activities while on bail, the Court is satisfied that the respondent (A-2) does not deserve to continue to remain on bail. Accordingly, the judgment and order passed by the High Court is set aside. [para 24, 25 and 27] [1127-C-D, F; 1128-B-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 334 of 2013.

E From the Judgment & Order dated 10.02.2012 of the High Court of Judicature for Gujarat at Ahmedabad in Criminal Misc. Application No. 1281 of 2012.

WITH

F Crl. A. Nos. 335 & 336 of 2013.

G K.T.S. Tulsi, Uday U. Lalit, Amit Sharma, Hemantika Wahi, Pinky Behra, Nandini Gupta, Yogesh Ravani, Shiv Mangal Singh, Abhinandini Sharma, T. Mahipal for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted in all the special leave petitions.

H 2. Ravindersingh @ Ravi Pavar has preferred appeal

arising out of SLP (Crl.) No. 3334 of 2012 before this Court against the final judgment and order dated 10.02.2012 passed by the High Court of Gujarat at Ahmedabad in Criminal Misc. Application No. 1281 of 2012 whereby the High Court dismissed his application filed under Section 439 of the Code of Criminal Procedure, 1973 (in short 'the Code') seeking regular bail in C.R. No. 252 of 2009 registered with Odhav Police Station, Ahmedabad for the offences punishable under Sections 302, 307, 328, 272, 273, 201, 109, 114, 120B of the Indian Penal Code, 1860 ('IPC' for short) and Sections 65(a)(b)(c)(d)(e), 66(1)(b), 67-1A, 72, 75, 81 and 83 of the Bombay Prohibition Act, 1949.

3. The State of Gujarat, aggrieved by the judgment and order dated 29.09.2011, passed by the High Court in Criminal Misc. Application Nos. 12384 and 12385 of 2011 whereby the High Court enlarged one Jayesh Hiralal Thakkar (A-2) on bail in connection with C.R. No. 161 of 2009 registered with Kagdapith Police Station, Ahmedabad for the offences punishable under Sections 120B, 302, 307, 328, 272, 273, 201, 217, 221, 109 and 114 of IPC and Sections 65(a)(b)(c)(d)(e), 66(1)(b), 68, 72, 75, 81 and 83 of the Bombay Prohibition Act, 1949 and C.R. No. 252 of 2009 registered with Odhav Police Station, Ahmedabad for the very same offences, has filed the other two appeals arising out of special leave petition Nos. 4026 and 4027 of 2012.

4. Since the subject-matter of all the three appeals is one and the same, they are being disposed of by this common judgment.

S.L.P. (Criminal) No. 3334 of 2012:

5. The case relates to the hooch tragedy which resulted into the death of 147 persons and serious physical injuries to 205 others after consuming spurious country-made liquor consisting poisonous chemical Methyl Alcohol in different parts of the Ahmedabad city, Gujarat, in July, 2009 for which case

A has been registered against several accused persons under various Sections of IPC and the Bombay Prevention Act, 1949 with Odhav and Kagdapith Police Stations vide C.R. Nos. 252 and 161 of 2009 respectively.

B 6. The charge framed against Ravindersingh @ Ravi Pavar (accused No.11) is that he was a party to a meeting held with other accused persons prior to the date of the incident wherein they conspired to manufacture and distribute country-made liquor consisting poisonous chemical Methyl Alcohol, in order to gain financial benefit, by selling the same due to its low cost. The charge sheet further proceeds that as a part of criminal conspiracy, he along with other accused, agreed to manufacture and distribute/sell such liquor to suppliers in spite of the knowledge that on consumption of the same, it can cause death or severe physical damage/injury to the consumer.

D 7. When the accused/appellant moved an application under Section 439 of the Code in connection with C.R. No. 252 of 2009, before the High Court, on going into the specific allegations against him, his role and involvement in the hooch tragedy which resulted into more than 147 deaths in the city of Ahmedabad and after satisfying prima facie case as well as considering the gravity of the crime punishable under Section 302 etc. the High Court rejected his third successive bail application.

F 8. Mr. K.T.S. Tulsi, learned senior counsel for the appellant, after taking us through the allegations in the charge sheet and connected materials submitted that in the absence of any material that the appellant had any knowledge that illicit liquor was poisonous or that he had any intention to cause the death of the deceased persons at the most it is the case under Section 304 of IPC and not under Section 302 of IPC. He further submitted that the High Court failed to consider that the co-accused, alleged to be having similar role as that of the appellant as well as those accused allegedly having graver role, have already been granted bail and, therefore, on the ground

of parity also, the accused/appellant deserves to be enlarged on bail on the same terms and conditions. A

9. Ms. Hemantika Wahi, learned counsel appearing for the State, by taking us through the allegations mentioned in the charge sheet, statement of witnesses and the gravity of the offence submitted that in view of the appellant's association with the main accused, namely, Vinod @ Dagri (A-1) and also taking note of the fact that he is a "habitual offender" involved in many similar offences, it is not desirable to enlarge him on bail and according to her, the High Court was fully justified in dismissing his bail application. B C

10. We have carefully considered the allegations, materials placed, gravity of the offence etc. in detail.

11. Normally, while considering the application for bail, it is not necessary for the court to assess the materials placed by either side discuss and arrive at a definite conclusion. However, taking note of the gravity of the offence, we have no other option except to deal with those aspects confining to the disposal of the bail application. The charge sheet (Annexure-P3) filed along with the special leave petition gives the details of involvement/role played by the accused persons. The role of the present appellant (A-11) reads as under: D E

"The accused No.11 Ravindersingh @ Ravi s/o Jayramsingh Pavar mentioned in column No.1 who was doing the business of country and foreign liquor with his partners column No.1 accused Nos. 29 and 30 and having the criminal history and remaining in contact with the accused No.1 for obtaining cheap country liquor having Methyl Alcohol made the partnership with the accused No.1 and obtained county liquor having Methyl Alcohol from accused No.1 and in spite of aware of the fact that it caused physical harm which cause death of the persons brought it from Vanthvadi village on 06.07.2009 through his persons accused No. 32 and 33 and sold it on cheap rates F G H

A to the column No.1 accused Nos. 27, 28 and 31 and
 column No. 2 accused Nos. 1 and 2 and also selling it to
 his own liquor stand place situated in Bapunagar area
 behind General Hospital through his persons and on
 drinking caused the death of the persons and also causing
 B the serious injuries to the peoples fulfilled the criminal
 conspiracy and on 06.07.2009 lots of people died in the
 Ahmedabad city drinking the poisonous liquor and
 admitted into the Hospitals and in spite of knowing the said
 facts continue to sell the poisonous country liquor
 C committed the serious nature offence and thereafter
 disposed off the evidence had disposed the chemicalized
 poisonous liquor which is in his possession."

12. Mr. Tulsi, learned senior counsel for the accused/
 appellant has contended that the only allegation against him is
 D that he has simply sold the country-made liquor and prima facie
 no case is being made out against him for manufacturing
 spurious liquor and, therefore, he cannot be charged under
 Sections 302, 307 and 328 of IPC. On going through the entire
 materials, we are unable to accept the same.

E 13. The materials placed by the prosecution show that the
 appellant was not just a supplier of alcohol but was one of the
 main conspirators along with Vinod @ Dagri (A-1) in the
 manufacture of spurious alcohol along with other co-accused.
 F It is the case of the prosecution as established by the statement
 of witnesses that the appellant, along with main accused, with
 a view to earn easy money, hatched a conspiracy for
 manufacturing spurious alcohol from Methyl Alcohol, very well
 knowing that it is poisonous and can cause death or severe
 physical damage/injury on consumption. The statements of
 G various persons relied on by the prosecution supports the
 above stand. The investigation further revealed that on the next
 day of the hooch tragedy in July, 2009, the appellant and his
 two associates had gone to one-Farzana Banu to sell the huge
 stock of spurious liquor, since the premises of the appellant
 H was raided by the Police.

14. A perusal of the reasoning of the High Court as well as the materials placed by the prosecution prima face establish that the appellant was not a mere supplier of spurious alcohol but he was involved in the criminal conspiracy of manufacturing spurious liquor along with the main co-accused Vinod @ Dagri (A-1) and selling the same at various places through his men. The statements of various persons including one Dahiben support the greater role played by the accused/appellant.

15. Mr. Tulsi, learned senior counsel has also claimed parity with the co-accused Jayesh Hiralal Thakker (A-2), who has been granted bail by the High Court, vide order dated 29.09.2011, in the similar offence and claimed similar order in respect of the present appellant - Ravindersingh @ Ravi Pavar. He also brought to our notice that bail has been granted to one Minaben (A-27) on 20.07.2011 and the State has not filed any special leave petition before this Court. As far as grant of bail to Jayesh Hiralal Thakker is concerned, the State has filed Special Leave Petition (Criminal) Nos. 4026 and 4027 of 2012, which we are going to consider after the conclusion of the present appeal. Hence, the appellant cannot claim parity with the co-accused Jayesh Hiralal Thakker. Insofar as the order granting bail to A-27 is concerned, we were taken through the reasons appended to in her bail application and also of the fact that she being a lady, we are of the view that the appellant cannot claim parity with the said accused in claiming bail.

16. Apart from the above materials, learned counsel for the State has also brought to our notice that the appellant is a "habitual offender" and is facing more than 20 cases including similar cases under the various provisions of IPC and the Bombay Prohibition Act, 1949. It is further pointed out that there is every likelihood that if the accused/appellant is released on bail, he would threaten the witnesses and again indulge in sale of spurious liquor.

17. It is a well known fact that Methanol is a poisonous substance and by adding the same while manufacturing

A spurious alcohol, it can have devastating results and can cause death or severe damage to health or injuries to anyone who consumes it. Further, such type of offences, as in the case on hand, are against the society at large and who commit the same do not deserve any leniency, particularly, in the State of
 B Gujarat where complete prohibition is being followed. Merely because the accused/appellant had spent three years as an undertrial prisoner, taking note of the gravity of the offence, he is not entitled for bail. As observed earlier, in view of the gravity of the offence, death of a number of persons, injury to several
 C others and the impact on the society as a whole, we hold that the appellant is not at all entitled to bail at this stage and the High Court has rightly denied his application for bail, consequently, the appeal of the accused fails and the same is dismissed.

D **Appeals filed by the State:**

S.L.P. (Criminal) Nos. 4026 and 4027 of 2012

E 18. The above mentioned appeals have been preferred by the State wherein the respondent—Jayesh Hiralal Thakker (A-2) is an accused in C.R. No.161 of 2009 registered with Kagdapith Police Station, Ahmedabad and C.R. No. 252 of 2009 registered with Odhav Police Station, Ahmedabad and in both the cases, he has been charged under various sections of IPC and the Bombay Prohibition Act, 1949, as mentioned
 F earlier and was granted bail by the High Court.

G 19. The respondent is Accused No. 2 in C.R. No. 252 of 2009 and C.R. No. 161 of 2009 registered at Odhav and Kagdapith Police Stations respectively wherein total of 147
 H persons died and 205 persons were seriously injured after consuming spurious liquor prepared from chemicals like ethanol and methanol, which were supplied by the respondent-accused, who was trading in those hazardous chemicals, to Vinod @ Dagri (A-1) for the preparation of country-made liquor. It is highlighted by the prosecution that during the course of

investigation, it was revealed that respondent (A-2) is a prime conspirator and had indulged in supplying methyl alcohol for manufacturing country made liquor. According to the prosecution, the statements recorded from seven witnesses reveal about the involvement of the respondent. It is also projected by the prosecution that one of the witnesses stated that near the petrol pump at Mogar, there is a godown and two barrels were put in his vehicle to be delivered to A-1, who was the mastermind in preparation of country made liquor out of methyl alcohol, supplied by A-2 at village Vanthwadi. It is also their case that respondent (A-2) had purchased about 500-600 plastic and iron barrels as per his requirement and again in the month of July, he purchased 70 more barrels. The prosecution has also projected that A-2 had sufficient knowledge about the properties of methyl alcohol and that it is poisonous to use in the preparation of country liquor. Despite this, the respondent used to obtain the same illegally from the tankers coming from Kutch and Mumbai through absconding co-accused and kept the same in his custody without permit and supplied it to Vinod @ Dagri (A-1) for the preparation of liquor. All these particulars form part of charge sheet filed on 05.09.2009.

20. The specific allegations in the charge sheet about the respondent (A-2) are as under:

"Accused No.2 Jayesh Hiralal Thakkar stated in the Column No.(1) having the criminal antecedents who is running illegal business of chemical at the Godown situated at the petrol Pump located at Village – Mogar, in company of the Accused No.3 named in the Column No.(1) and through the accused Nos. 3, 4 and 5 mentioned in the Column No. (2) had illegally obtained the poisonous Methyl Alcohol from the Tankers coming from Bomby and Kutch possessed the same without any Pass or permit, and inspite of having knowledge regarding poisonousness of Methyl Alcohol and that it is to be used in preparing liquor the Accused Nos. 4, 5, 6, 7 and 8 had sold the poisonous

- A Methyl Alcohol to Accused No.1 for manufacturing
 Degenerated poisonous country liquor and thereby have
 played active role in the conspiracy with the view to earn
 monetary profit and after the declaration of Hooch Tragedy
 disposed of the Methyl Alcohol within their possession and
 B had gone on run and thereby have committed serious
 offence.”

21. The information furnished by the prosecution clearly
 shows that in a State having complete prohibition policy, the
 supply of raw material for liquor, its production and distribution
 C are illegal. It is also demonstrated that respondent (A-2) has
 illegally supplied poisonous chemicals like ethyl and methyl
 alcohol to A-1 for the manufacture of country made liquor. It is
 not in dispute that if anyone consumes liquor manufactured out
 of ethyl/methyl alcohol, it would have a very adverse effect on
 D the body and can cause death or bodily injury as is likely to
 cause death. In spite of the abundant materials placed by the
 prosecution and even after taking note of the fact that the
 samples sent to Forensic Science Laboratory (FSL) for
 analysis confirmed the presence of methanol and ethanol and
 E also of the fact that A-2 has supplied those materials to A-1,
 the claim that he had no knowledge about all these aspects is
 unacceptable. Though the learned Single Judge of the High
 court perused and verified the expert opinion of the Medical
 Officer, the FSL report and noted that poisonous chemical is
 F found, after casually finding that there is no “meeting of mind”
 and “agreement for criminal conspiracy” accepted the case of
 A-2 and enlarged him on bail.

22. The other reason given by the High Court is that the
 whole transaction in the said business of A-2 was looked after
 G by his nephew and in view of the fact that he has already
 disposed of the petrol pump, concluded that prima facie
 ingredients of Sections 299 and 300(4) of IPC would not attract
 and enlarged him on bail after imposing certain conditions.

H

23. We have already noted that because of the conduct of A-2 in supplying ethanol and methanol to A-1 for preparation of spurious liquor, several casualties and injuries were resulted and in view of the acceptable materials, we are unable to accept the reasoning of the High Court. We are constrained to observe that the High Court, in a casual way, has concluded that since his business was looked after by his nephew and he also disposed of his petrol pump, A-2 cannot be blamed, which according to us, is not a valid ground for enlarging him on bail.

24. In para 5 of the rejoinder affidavit, the State has highlighted that A-2 is a "habitual offender" and there are 22 cases pending against him in various police stations. It is also mentioned in the counter affidavit that during the period while he was granted temporary bail by the High Court, he indulged in an offence of theft and a case was registered against him vide I-C.R. No. 92 of 2011 under Section 379 of IPC by the Vasad Police Station for which he was arrested on 10.08.2011 and later enlarged on bail. It is also brought to our notice that the respondent A-2, while on regular bail, was arrested on 13.09.2012 in Vadodara city in connection with Javaharnagar Police Station crime registered vide I-C.R. No. 94 of 2012 under Sections 407, 408 and 120B and later on he was released on bail.

25. Taking note of all these aspects, his antecedents, the gravity and nature of offence, loss of human lives, the impact on the social fabric of the society, his continuous involvement in criminal activities while on bail, we are satisfied that respondent (A-2) does not deserve to continue to remain on bail.

26. In a State having prohibition policy, supply of raw material for liquor, its production and distribution are illegal and A-2 has supplied those poisonous chemicals such as ethyl and methyl alcohol to A-1 for the manufacture of spurious country made liquor. It is a matter of common knowledge that if any one consumes liquor manufactured out of ethyl/methyl alcohol, it

A would have very adverse effect on the body which can cause death or bodily injury as is likely to cause death.

B 27. Under these circumstances, considering the nature of the offence and the manner in which A-2 supplied those poisonous chemicals despite having full knowledge about its consequences, we are satisfied that the respondent (A-2) does not deserve liberty of remaining on bail. Accordingly, the judgment and order dated 29.09.2011 passed by the High Court in Criminal Misc. Application Nos. 12384 and 12385 of 2011 is set aside. The respondent (A-2) is directed to
C surrender before the court concerned within a period of two weeks from today, failing which, necessary steps be taken for his arrest in order to put him in jail.

D 28. It is unfortunate to note that in a State like Gujarat, which strictly prohibits the use of alcohol in any form whatsoever, the accused caused death and injuries to several persons by supplying spurious country-made liquor. Taking a serious view of the matter, the complexity of the crime, the role played by accused persons as well as the number of casualties, we are of the view that it is not a fit case for grant of bail.

E 29. In the light of the above discussion, the appeal of the accused-Ravinder Singh @ Ravi Pavar is dismissed. We direct the trial Judge to proceed with the trial on day to day basis avoiding unnecessary adjournments. It is made clear that if the trial continues beyond one year from today, they are free to file
F fresh application before the trial Court. In that event, it is for the concerned court to dispose of the bail application on merits. It is made clear that whatever observations made above are only for the purpose of disposal of the bail application. It is for the trial Court to decide on the basis of the materials placed before
G it in accordance with law.

30. The appeal of Ravindersingh @ Ravi Pavar (A-11) is dismissed and the appeals filed by the State are allowed.

H R.P.

Appeals disposed by.