ATULBHAI VITHALBHAI BHANDERI

v.

STATE OF GUJARAT

(Criminal Appeal No. 1390 of 2023)

MAY 04, 2023

[AJAY RASTOGI AND AHSANUDDIN AMANULLAH, JJ.]

Bail : Grant of – Appellant involved in intimidating and threatening the victim in connivance with the main accused no.1 running an organised crime syndicate for extorting money and land-grabbing by threatening people – 59 cases registered against the accused no.1 – FIR against appellant and others for offence punishable under the 2015 Act and the Penal Code – Bail application by the appellant during pendency of the trial – Dismissed by the High Court – On appeal, held: Discretion must be exercised judiciously – Keeping in view the appellant's alleged role, no inclination to exercise discretion in his favour – Out of the twelve charge-sheeted accused, six co-accused have not been granted bail, five have availed the benefit of default bail and only one is on regular bail, thus, interference not called for – Allegations levelled and the statements of the witnesses have been perused carefully – In view thereof, the prayer for grant of bail to the appellant is rejected – However, as submitted by the State, upon the completion of recording of statements of the protected witnesses, the appellant is at liberty to renew his plea for bail – Gujarat Control of Terrorism and Organised Crime Act, 2015 – ss. 3(1), 3(2), 3(3), 3(4) and 3(5) and 4 – Penal Code, 1860 – ss. 384, 385, 386, 387, 506(1), 506(2), 507, 201, 120B.

Vilas Pandurang Pawar v State of Maharashtra, **(2012) 8 SCC 795 : [2012] 8 SCR 270 – relied on.**

State of Gujarat v Sandip Omprakash Gupta, **2022 SCC OnLine SC 1727;** *State of Maharashtra v Shiva alias Shivaji Ramaji Sonawane*, **(2015) 14 SCC 272 : [2015] 9 SCR 211;** *Gudikanti Narasimhulu v Public Prosecutor,* **(1978) 1 SCC 240 : [1978] 2 SCR 371;** *Niranjan Singh v Prabhakar Rajaram Kharote,* **(1980) 2 SCC 559 :**

A **[1980] 3 SCR 15;** *Ramesh Bhavan Rathod v Vishanbhai Hirabhai Makwana (Koli)* **(2021) 6 SCC 230 – referred to.**

Case Law Reference

B **[2015] 9 SCR 211**	**referred to**	**Para 5**
[1978] 2 SCR 371	**referred to**	**Para 9**
[1980] 3 SCR 15	**referred to**	**Para 10**
[2012] 8 SCR 270	**relied on**	**Para 11**
C **(2021) 6 SCC 230**	**referred to**	**Para 12**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1390 of 2023.

From the Judgment and Order dated 07.09.2022 of the High Court of Gujarat at Ahmedabad in CRLMA No. 22475 of 2021.

D Maninder Singh, Ms. Nitya Ramakrishnan, Sr. Advs., E. C. Agrawala, Sunil Murarka, Ankur Saigal, Gunnam Venkantewara Rao, Ms. S. Lakshmi Iyer, Ms. Anwesha Padhi, Pradhuman Gohil, Mrs. Taruna Singh Gohil, Ms. Ranu Purohit, Alapati Sahithya Krishna, Ms. Nidhi Mittal, Advs. for the Appellant.

E S. V. Raju, ASG, Ms. Swati Ghildiyal, Ms. Devyani Bhatt, Praveen Kumar Singh, Advs. for the Respondent.

The Judgment of the Court was delivered by

AHSANUDDIN AMANULLAH, J.

F Leave granted.

2. The present Appeal is directed against the Final Judgment and Order dated 07.09.2022 (hereinafter re- ferred to as the "Impugned Judgment") passed by the High Court of Gujarat at Ahmedabad (hereinafter referred to as the "High Court") in Criminal Miscellaneous G Application No. 22475 of 2021, by which the prayer for release of the Appellant on bail has been dismissed.

THE FACTUAL PRISM:

3. The Appellant, along with others, is accused in FIR Cr No.I-11202008202186 of 2020 registered with the "A" Division Police Station,

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Jamnagar in the State of Gujarat for offences punishable under Sections 3(1), 3(2), 3(3), 3(4) and 3(5) and 4 of the Gujarat Control of Terrorism and Organised Crime Act, 2015 (hereinafter referred to as the "GCTOC Act") read with Sections 384, 385, 386, 387, 506(1), 506(2), 507, 201, 120B of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC"). The Appellant is arrayed as accused No.4 in the said FIR and is said to be involved in intimidating and threatening the victim in connivance with the main accused no.1 Jaysukh @ Jayesh Muljibhai Ranpara (Patel), running an organised crime syndicate for the purpose, with the intention to extort money and in land-grabbing by threatening people at large. As per the FIR details, 59 cases are registered against the said accused no.1. It is alleged that the Appellant threatened the victim and concerned witnesses to cancel the land deal pertaining to survey No.961 or to pay a sum of Rs.1,00,00,000/- (Rupees One Crore) to the Appellant, which they refused. The allegation against the accused no.1 is of threatening the victim. The role of the appellant is that he was involved in intimidating and threatening the victim on behalf of the accused no.1 for ensuring the victim's compliance with the extortion demands. It is alleged that the appellant owns properties derived from funds of organised crimes. Further, it is alleged that from the enquiry, it is revealed that the Appellant was directly involved in collecting the sum(s) extorted from the victim in the city, and that he has also been found to be involved in passing on information which is likely to assist the crime syndicate in its activities, thereby abetting the actions of the gang.

SUBMISSIONS BY THE APPELLANT:

4. Learned counsel for the Appellant submitted that there are eight other First Information Reports in which he has been charge-sheeted, out of the which seven are prior to the year 2015 and one is of the year 2019. It was contended that the section(s), under which the FIR in question has been lodged, do not indicate his involvement in any organised crime. And thus, without any basis, he has been made an accused in the present case.

5. Learned counsel further submitted that as per the allegations made in the FIR, the Appellant had arranged a telephonic talk between the accused no.1, the complainant as well as one Bhagwanjibhai Kanjariya; that upon the complainant neither cancelling the deed of the plot nor paying the purported extortion amount of Rs.1,00,00,000/- (Rupees One Crore), the Appellant along with the accused no.1 hatched a

A conspiracy and sent six persons to the residence of the complainant and they fired three rounds of bullets. This, according to learned counsel, is false. As per the submission, the four persons who gave the complaint before the police, on the very next day of the FIR being lodged, had stated that the Appellant did not make any telephonic call to the accused no.1. Learned counsel drew the attention of this Court to the Judgment in ***State of Gujarat v Sandip Omprakash Gupta*, 2022 SCC OnLine SC 1727** dated 15.12.2022, the relevant portions being Paragraphs No. 49, 56 and 57, which has reiterated the *dictum* laid down by this Court in ***State of Maharashtra v Shiva alias Shivaji Ramaji Sonawane*, (2015) 14 SCC 272**, which stipulates that the offence of "organised crime" could be said to have been constituted by at least one incident of continuation apart from continuing unlawful activity evidenced by more than one chargesheets in the preceding ten years.

6. Thus, it was submitted that the last case, prior to the present one, was registered against the Appellant on 14.11.2019, i.e., before the GCTOC Act came into force in the State of Gujarat (as the GCTOC Act came into force in the State of Gujarat w.e.f. 01.12.2019). Learned counsel further submitted that out of sixteen accused, four accused are absconding and, in total, twelve accused are charge-sheeted, out of which six accused are on bail. Thus, even on the ground of parity, it is submitted that the Appellant be also enlarged on bail.

SUBMISSIONS OF THE RESPONDENT-STATE:

7. Mr S V Raju, the learned Additional Solicitor General of India, appearing for the State, submits that the Appellant-accused was well-acquainted with accused no.1 Jaysukh @ Jayesh Muljibhai Ranpara (Patel). Mr Raju submitted that the Appellant became close to accused no.1 Jaysukh @ Jayesh Muljibhai Ranpara (Patel) during the 2015 Municipal Election and was an accused in the *Patel Reservation Movement* riots. It was contended that apart from the present case, eight other cases have been registered against the Appellant and he is trying to pressurize the authorities by spreading false news with regard to land deal relating to survey No.961 being cancelled; but when his efforts failed, witnesses were threatened and intimidated to cancel the land deal(s). It was further submitted that the Appellant facilitated the first meeting on 01.11.2019 between the accused no.1 and PWs No. 5 and 6 and others and when the extortion money was not paid, another meeting was conducted in which Rs. 2,19,00,000/- (Rupees Two Crores

and Nineteen Lakhs) was paid to the members of the organised crime syndicate. Again, on 20.02.2022 after the arrest of the Appellant, his son is accused of facilitating a call between PW 5 and accused no.1 and extort ing Rs. 25,00,000/- (Rupees Twenty Five Lakhs). It was submitted that the Court may consider the prayer for bail only after the examination of protected witnesses, whose statements directly prove the involvement of the Appellant in the crime(s). Moreover, it was submitted that out of the six co-accused released on bail, five are out on default bail, and only one accused had se- cured regular bail.

ANALYSIS, REASONING AND CONCLUSION:

8. Having examined the rival contentions, the Court does not consider it necessary to go into the legal as- pect pertaining to the applicability of the GCTOC Act *in praesenti*, as the current Appeal has been filed only for the purpose of seeking bail during the pendency of the trial.

9. Had there been no other case against the Appellant and no material, at least *prima facie*, to indicate his regular participation in any crime, the Court could have considered his prayer, but keeping in view his al- leged role, we are not inclined to exercise discretion in his favour, for now. When we speak of discretion, we have in mind "*judicial discretion*" as explained in ***Gudikanti Narasimhulu v Public Prosecutor*, (1978) 1 SCC 240**:

> "*3. What, then, is "judicial discretion" in this bail context? In the elegant words of Ben- jamin Cardozo [The Nature of the Judicial Process — Yale University Press (1921)]:*
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> *"The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of good- ness. He is to draw his inspiration from conse- crated principles. He is not to yield to spas- modic sentiment, to vague and unregulated benevolence. He is to exercise a discretion in- formed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life". Wide enough in all conscience is the field of discretion that remains."*
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> *Even so it is useful to notice the tart terms of Lord Camden that [1 Bovu, Law Dict., Rawles' III Revision p. 885 — quoted*

A *in Judi- cial Discretion — National College of the State Judiciary, Rano, Nevada p. 14] "the discretion of a Judge is the law of tyrants: it is always unknown, it is different in different men; it is casual, and depends upon constitution, tem- per and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and passion to which human nature is liable. "*

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4. Some jurists have regarded the term "judi- cial discretion" as a misnomer. Nevertheless, the vesting of discretion is the unspoken but inescapable, silent command of our judicial system, and those who exercise it will remember that discretion, when applied to a Court of Justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful, but legal and regular.

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D *An appeal to a Judge's discretion is an appeal to his judicial conscience. The discretion must be exercised, not in opposition to, but in ac- cordance with, established principles of law. [Judicial discretion, (ibid) p. 33]*"

(emphasis supplied)

E 10. The fact, that out of the twelve charge-sheeted accused, six co-accused have not been granted bail, five have availed the benefit of default bail and only one is on regular bail, have also persuaded this Court not to interfere. We have also considered the allegations levelled and perused carefully the statements of the witnesses shown to the Court. In ***Niranjan Singh v Prabhakar Rajaram Kharote*, (1980) 2 SCC 559**, this Court opined:

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"*3... Detailed examination of the evidence and elaborate documentation of the merits should be avoided while passing orders on bail applica- tions. No party should have the impression that his case has been prejudiced. To be satisfied about a prima facie case is needed but it is not the same as an exhaustive exploration of the merits in the order itself*."

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(emphasis supplied)

11. In ***Vilas Pandurang Pawar v State of Maharashtra*, (2012) 8 SCC 795**, this Court observed *"...Moreover, while considering the*

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application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record…". We are in respectful agreement with the law exposited in these cases. We consciously refrain from detailing our views on the merits of the matter.

12. Insofar as parity is concerned, we need only reproduce the apt observations from ***Ramesh Bhavan Rathod v Vishanbhai Hirabhai Makwana (Koli)*, (2021) 6 SCC 230**, of which we take note:

> "*26.… Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been estab- lished. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has pro- ceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law.*"
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> (emphasis supplied)

13. In the facts and circumstances, at the present juncture, this Court is not inclined to allow the prayer for enlarging the Appellant on bail. Accordingly, the prayer for bail is hereby rejected.

14. However, the stand taken on behalf of the State of Gujarat is that the prayer for bail of the Appellant may be considered only after the protected witnesses are examined. In this context, learned Additional Solicitor General has indicated that six months' time be granted for recording statements of the protected witnesses.

15. In such light, it is observed that upon the completion of recording of statements of the said protected witnesses, the Appellant is at liberty to renew his plea for bail, if so advised.

16. The Appeal stands disposed of accordingly, with liberty afore granted. Pending application(s), if any, stand consigned to records.

Nidhi Jain
(Assisted by : Rakhi, LCRA)

Appeal disposed of.