

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 1425 of 2021****With****R/CRIMINAL MISC.APPLICATION NO. 1453 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.G.URAIZEE**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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KIRANSINH BABARSINH PARMAR

Versus

STATE OF GUJARAT

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Appearance:

JM PANCHAL with MR VIRAT G POPAT(3710) for the Applicant(s) No. 1

MEET R MODI(8744) for the Respondent(s) No. 1

MR. BHADRISH S RAJU(6676) for the Respondent(s) No. 1

MR RONAK RAVAK APP (2) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE A.G.URAIZEE

Date : 05/05/2021

COMMON ORAL JUDGMENT

1. Both these applications emanate from the selfsame FIR hence they are being disposed of by this common judgment.

2. Both these applications under section 439 of the Code of Criminal Procedure, 1973 ("the Code" for short) are preferred by the applicants for being enlarged on bail in connection with an FIR being C.R. No.A-11214032201643 of 2020 registered with Mandvi Police Station, District Surat for the offence punishable under sections 306, 506(2), 386, 270, 271, 201, 120(B) and 114 of the Indian Penal Code.

3. The facts as could be gathered from the impugned FIR and connected material can be summed up as under:-

3.1 The first informant is the son of the victim/ deceased and engaged in the business of road construction and stone quarry, which is situated in Khanjroli Gam in Mandvi Taluka and is in the name of first informant's father since 1982. As per the prosecution case, on 07.09.2020, at around 04:30 a.m. In the morning, the first informant got a call from his brother informing that the Manager I.e. Sandeepbhai has informed that his father was not found and, therefore, the first informant went to the quarry in his car and reached there by 05:45 a.m. And his brother also reached. Thereafter, the first informant on searching the quarry along with the Manager and other friends, a torch, slippers and mobile of the father were found. While searching for the father of the first informant, the Manager had informed him that at 03:45 a.m. in the morning, the father of the first informant had called the Manager and told him that when the first informant comes to the office, he will give him the note which is kept in the diary of his father. Therefore, the first informant asked that if the Manager had read the note to which, he denied and handed over the note to the first informant, which was written by the father of the first informant. It was written in the note that, father of the first informant had a property of 10,218 sq. mtrs. in Adajan, Surat which was sold to accused no.6 viz.

Kishorbhai Bhurabhai on 17.03.2015, based on an agreement to sell on a note at Rs.24,03,88,687/- and accused nos.6 and 5 i.e. Kishorbhai Bhurabhai and Kanaiyalal Narola had paid worth Rs.18,00,00,000/- in cash to the father of the first informant on different dates and Rs.3,09,30,584/- by cheques of different banks. Accused no.6 was the owner of Star Group and on 17.08.2016, an income tax raid was made on his premises and based on the note of agreement to sell, there was a tax inquiry on the first informant as well. As a result of the tax inquiry, all the truth was told by the father of the first informant, however, accused no.6 had hidden names of his partners, and therefore, the liability of paying tax of Rs.8,49,49,020/- was on the head of the father of the first informant and further, due to sale deed on the original value, there was additional capital gain tax of Rs.4,80,00,000/- to be paid by the father of the first informant and there was total liability of Rs.13,00,00,000/- incurred on the father of the first informant.

3.2 The father of the first informant had talked to accused no.6, whereby he had assured to pay the same. Thereafter, on 30.01.2019, accused no.6 had sent a legal notice against the promise and statement given in the income tax, to which the father of the first informant had replied through his advocate on 04.02.2019. Thereafter, on 02.01.2020, at around 7-8 p.m., the police officers came to the house of the first informant and asked the father to come to the Police Station as Police Inspector (A-1) had called him immediately to which the father of the first informant denied as it was late and his time to have dinner and told that he will come tomorrow. However, the police officials forced him to come and, therefore, the first informant along with his father went to the Police Station where, in the office of the Police

Inspector, there were two persons viz. Rajubhai Lakhbhai Bharwad and Hetal Natvarlal Desai (I.e. accused nos.2 and 3), who started abusing the father of the first informant and by then accused no.4 viz. Bhavesh Savani came and forced him to give a notarized document immediately in relevance to the disputed land and took them to a notary viz. Hitesh Kanji Solanki at 11:00 p.m. At night, and thereby, threatened them to sign the said documents. The first informant was forced to be the witness therein.

3.3 Thereafter, on 03.01.2020, they had made a notarized document of declaration before the Notary viz. Bharat R. Chauhan. However, due to fear, it was not produced anywhere and the partner of accused no.6 i.e. accused no.5 had told the father of the first informant that if the said land is transferred in the name of accused no.2 or any person, he has no objection and had given a written notarized document to that extent. Thereafter, accused no.2 had asked for the same in the end of January, at that time, the first informant had asked for a detailed document in those regards which was denied and told that only plain document will be given. Thereafter, on 04.02.2020, 4 - 5, police officers had come to the house to call the father of the first informant, but the mother had denied as the father was not well and was asleep.

3.4 The brother of the first informant had sent an application to the Superintendent of Police, against the same through WhatsApp after which the police officers had returned back. Thereafter, on 18.02.2020, accused nos.2, 3, 8 and accused no.7 had come at his house of the first informant with ready document of satakhat along with possession and showed the signature and videography of the father of the first informant and had told to prepare for sale deed and gave cheques amounting to Rs.7,55,00,000/-

of different banks and had taken back the prior cheques of other party worth Rs.7,48,00,000/- and told to give paper notice that the said land is not sold to anyone. The same were denied by them as proper documentation was required in order to avoid tax disputes. Therefore, dispute had arisen again and on 30.07.2020, in Bhesna Gam in a farm house, the Police Inspector (I.e. applicant no.1), who was home quarantined, had called them by sending WhatsApp location and on reaching at the location, other accused nos.2, 4, 9 and 10 were present and the first informant and his brother were threatened and a notarized agreement of even lesser value was made and sent to the house of the first informant along with accused nos.2, 3, 4, 9 and other police officials for signature of father of the first informant along with authority to do newspaper publication. Therefore, the said publication was done in the newspaper on 01.08.2020. Thereafter, due to less payment and improper documentation, the sale deed was denied by the first informant and accused-Police Inspector had kept the documents with him informing that if he makes the sale deed then only he will give back the papers. Thereafter, the first informant and his father and brother got notice from Rander Police Station and got called for giving reply, but due to fear, they did not go to the Police Station and gave reply in writing. The first informant had told his father on 06th September to come early next day so as to go to the Commissioner to make a complaint in the matter of land dispute. However, due to the pressure created by the accused persons named in the FIR, since past months, the father of the first informant had committed suicide according to the first informant, in the morning. Therefore, the said F.I.R. came to be filed subsequently against accused persons as narrated in the F.I.R. In detail.

4. Heard Mr. J.M. Panchal, learned advocate with Mr. Virat Popat,

learned advocate for the applicant, Mr. Ronak Raval, learned APP for State and Mr. Bhadrish Raju, learned advocate for defacto complainant.

5. Mr. Panchal submits that investigation is over and chargesheet is filed. He submits that PI Laxmansinh Pratapsinh Bodana (A-1) is released on bail by coordinate bench vide order dated 28.4.2021 passed in Criminal Misc. Application No.3469 of 2021. It is his further submission that the applicants are the police constables who were working under the instructions of PI Bodana. He further submits that Kishorebhai Bhurabhai Kosiya (A-6) has preferred an application under section 482 of the Code for quashing of the petition being Criminal Misc. Application No.14267 of 2020 wherein by order dated 5.10.2020 he is protected. It is his further submission that Kanaiyalal Narola (A-5) is also protected by this court vide order dated 6.11.2020 passed in Special Criminal Application No.5938 of 2020 under section 482 of the Code. He would also submit that Vijay Baburao Shinde (A-7) and Mukesh Padmakaranbhai Kulkarni (A-8) are also released on regular bail by this court by judgment dated 16.3.2021 passed in Criminal Misc. Application No.802 of 2021 and Criminal Misc. Application No.270 of 2021 respectively.

5.1 He submits that the applicants are not named in the suicide note. It is his further submission that there is no allegation against the applicant regarding monetary gain or personal animosity with the deceased. He submits that section 386 of IPC states in respect of offence of extortion of putting a person in fear of death or grievance is not prima facie made out against the applicants. He further submits that the applicants are Government servants and have no criminal antecedents. He submits that the deceased committed suicide on account of circumstances created by himself. He, therefore, urges that the applicants may be enlarged on bail.

5.2 He has relied upon the following decisions:-

1. Lalita Kumari v. Government of Uttar Pradesh, (2014) 2 SCC 1
 2. State of Telangana v. Habib Abdullah Jeelani, (2017) 2 SCC 779
 3. Gurcharan Singh v. State of Punjab, (2020) 10 SCC 200.
6. Mr. Bhadrish Raju, learned advocate for the defacto complainant has opposed this bail application. He submits that the allegations against the present applicant are not comparable with the allegations made against PI Laxmansinh Bodana (A-1). He submits that the evidence prima facie indicates that independently the applicants have played role by tampering or destroying the laptop. He submits that the applicants had approached the house of the complainant and held out threats. He therefore, submits that the applicants cannot claim parity with PI Bodana (A-1). He, therefore, submits that the applicants may not be enlarged on bail.
7. Mr. Ronak Raval, learned APP has in addition to the submissions made by Mr. Raju, learned advocate for the defacto complainant submitted that the applicants are police personnel and they had given threats to the deceased on 30.7.2020 in the farmhouse. He submits that the applicants are involved in a serious offence. Hence, considering the gravity of offence, they may not be enlarged on bail.
8. The undisputed facts which can be culled out from the FIR and connected material are that the deceased and Kishorebhai Bhurabhai Koshiya (A-6) had entered into an agreement to sell dated 17.3.2014. The area of the land was 10218 sq. meters and it was agreed to be sold at a consideration of Rs.24,03,88,687/-. The present applicant is referred to as the partner of Kishorebhai Bhurabhai Koshiya (A-6) and the applicant and Kanaiyalal Narola (A-5) had paid a sum of Rs.18,00,00,000/- in cash to the deceased and Rs.3,09,30,584/- by cheques drawn on different

banks.

9. There was an income-tax inquiry on the premises of Kishorebhai Bhurabhai Koshiya (A-6) on 17.8.2016. There was an income-tax inquiry in respect of agreement to sell between the deceased and Kishorebhai Bhurabhai Koshiya (A-6) at the place of the deceased. Upon the information provided by the deceased to the income-tax officials in respect of the agreement to sell between him and Kishorebhai Bhurabhai Koshiya (A-6) a total income-tax liability of Rs.13,00,00,000/- was fastened on the deceased. The deceased had approached Kishorebhai Bhurabhai Koshiya (A-6) in connection with the said income-tax liability and he was assured by Kishorebhai Bhurabhai Koshiya (A-6) that he would make good the liability.

10. As per the allegations in the FIR, Kishorebhai Bhurabhai Koshiya (A-6) did not honour his promise of making good the income-tax liability of Rs.13,00,00,000/- fastened on the deceased which ensued the subsequent events between the deceased and the accused persons. There was a police complaint in respect of the agreement to sell entered into between the deceased and the Kishorebhai Bhurabhai Koshiya (A-6). The defacto complainant and the deceased were summoned to the police station in connection with the police complaint.

11. In the backdrop of the aforesaid undisputed facts, it prima facie appears that the deceased was summoned to the police station and lastly at the farmhouse on 30.7.2020 by PI Laxmansinh Bodana (A-1). At the farmhouse, the applicant amongst others were present and it is alleged that the pressure was exerted on the deceased and the defacto complainant in respect of the dispute relating to the land sold to Kishorebhai Bhurabhai Koshiya (A-6). As a consequence of the unbearable pressure, the deceased committed suicide on 6.9.2020.

12. The moot question that is involved in this application is whether the applicants can be said to have intentionally meted out alleged harassment to the deceased as a result the deceased had no option but to end his life.

13. It is trite that abetment is a mental process of instigating a person or intentionally aiding a person in doing of a thing. To constitute an offence of abetment, *mens rea* is a condition precedent. To put it in other words, there has to be a prima facie evidence to indicate that the accused person had intentionally with full knowledge of consequence of his act aided or induced a person to do or not to do a particular thing. Hence, without a positive act on the part of the accused to instigate or aid in committing suicide, the necessary requirement of section 107 cannot be said to have been fulfilled. As a consequence, a person cannot be held responsible for offence under section 306 of IPC. Moreover, there has to be nexus between the act of instigation and the ensuing suicide committed by the victim.

14. In the present case, undisputedly the last meeting had taken place on 30.7.2020 at a farmhouse between the applicant, the deceased and the original complainant amongst others and thereafter, the deceased had committed suicide after 38 days on 6.9.2020. Even in the suicide note, it is stated that there is a monetary dispute in respect of the land which was sold by the deceased.

15. It also prima facie appears from the FIR and connected material that neither any meeting took place between the deceased and the applicant and other accused persons nor the deceased was summoned by the police after 30.6.2020 till the deceased committed suicide. It thus prima facie appears that there was no proximate cause for the deceased to

commit suicide after 38 days of the last meeting on 30.7.2020.

16. The applicants were working as police constables with Rander Police Station at the time of the incident. A coordinate Bench of this court by order dated 28.4.2021 passed in Criminal Misc. Application No.3469 of 2021 has released PI Laxmansinh Bodana (A-1) on regular bail. Detailed reasons are assigned in that order. It is pertinent to note that the name of the said accused No.1 is mentioned in the suicide note, whereas the names of the present applicants do not find place in the suicide note. In my considered view, the role played by the present applicants and accused No.1 is similar and, therefore, the present applicants deserve to be enlarged on bail on the principle of parity.

17. I do not deem it expedient to burden this judgment with the discussion of the authorities relied upon by Mr. Panchal, learned advocate for the applicant and Mr. Bhadrish Raju, learned advocate for the defacto complainant as the ratio expounded in these authorities is well-known.

18. In view of the above, having perused the FIR and connected material and having taken into consideration the facts of the case, nature of allegations and the evidence against the applicant, without discussing evidence in detail, at this stage, I am of the view that the present one is a fit case to exercise discretion vested in this court under section 439 of the Code in favour of the applicants. I have also considered the following aspects:

- (i) The role attributed to the accused;
- (ii) The applicants are behind bars since 27.09.2020;
- (ii) The investigation is over and the charge- sheet is filed;
- (iii) Prima facie there is nothing to suggest that the applicants had

instigated or abetted the deceased to commit suicide;

- (iv) The suicide note does not contain the name of the applicants;
- (v) Prima facie the investigation does not reveal that the deceased or the first informant was put to fear of death or grievous hurt;
- (vi) Prima facie there is nothing to suggest that the applicants had financially or otherwise illegally gained from his actions.
- (vii) It is also not expressed that if the applicants are released on bail, they will in any manner temper with the evidence or influence the trial proceedings

19. In the result, the present applications are allowed and the applicants are ordered to be released on regular bail in connection with an F.I.R. Being C.R. No.I-11214032201643 of 2020 registered with Mandvi Police Station, Dist. Surat, on executing a personal bond of Rs.75,000/- (Rupees Seventy Five Thousand Only) each with one local surety of the like amount to the satisfaction of the learned 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 injurious to the interest of the prosecution;
- [c] surrender his passport, if any, to the lower court within a week;
- [d] not leave the State of Gujarat without prior permission of the concerned trial court;
- [e] mark presence before the concerned Police Station on every Monday of each English calendar month for initial six months and thereafter, on alternate Monday for a period of six months, between 10:00 a.m. and 2:00 p.m.;
- [f] furnish latest address of residence to the Investigating Officer 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;

20. The Authorities will release the applicants 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 concerned trial court will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the trial Court having jurisdiction to try the case.

21. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law. At the trial, learned Trial Court shall not be influenced by the observations of preliminary nature, qua the evidence at this stage, made by this Court while enlarging the applicants on bail. Rule is made absolute accordingly.

22. Registry is directed to intimate the concerned jail authority and the concerned Sessions Court about the present order by sending a copy of this order through Fax message, email and/or any other suitable electronic mode.

23. Learned advocate for the applicants is also permitted to send a copy of this order to the concerned jail authority and the concerned Sessions Court through Fax message, email and/or any other suitable electronic mode.

Z.G. SHAIKH

(A.G.URAIZEE, J)