

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION NO. 10587 of 2022

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SHAMBHUBHAI DEVRAJBHAI JARU
Versus
STATE OF GUJARAT

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Appearance:

MR VIVEK V BHAMARE(6710) for the Applicant(s) No. 1
MR VN BHAMARE(1122) for the Applicant(s) No. 1
MR KIRTIDEV R DAVE(3267) for the Respondent(s) No. 1
MR RAHUL K DAVE(3978) for the Respondent(s) No. 1
MR HARDIK SONI, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE

Date : 03/08/2022

ORAL ORDER

1. The present successive application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with CR No.11205032210048 of 2021 registered with Mundra Police Station, Kutch for offence under Sections 302, 343, 114, 326, 330 and 331 of the Indian Penal Code and Section 135 of the Gujarat Police Act.

2. Learned Advocate appearing on behalf of the applicant submits that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions. It is submitted that the applicant is Gram Rakshak Dal Javan, discharging duties at Mundra Police Station. It is submitted that he is not named in the FIR, but during the course of investigation, in a subsequent statement of the victims, name of the applicant is

arraigned as an accused.

2.1 It is submitted that the most relevant injured witness-Shamra Pabu Gadhavi, whose statement is relied upon, has not referred to the applicant in his four previous statements, but in the fifth statement recorded on 14.02.2021, role is attributed to the applicant of having inflicted injury. It is submitted that the applicant is a young man and trial is likely to consume a very long time. The applicant has cooperated with the investigation as well as trial and has never sought adjournment during the course of trial. However, trial has not progressed.

2.2 With regard to antecedents, it is submitted that the prosecution has cited four antecedents against the applicant, wherein the applicant has been acquitted.

3. As against this, learned APP appearing on behalf of the respondent-State and learned Advocate for the original complainant have opposed grant of regular bail looking to the nature and gravity of the offence. It is submitted that it is a gross case of custodial death and two persons, who were sought to be falsely implicated in the offence to settle a land dispute, have died.

4. Having heard learned Advocates for the parties and having perused documents on record, it appears that this case is of custodial death where three persons viz. Arjan, Harjog and Samara were arrested in an FIR registered for theft. The said FIR was

registered against the unknown persons and under the purported investigation of the offence of theft the aforesaid three persons were taken to the Mudra Police Station. It appears that while three persons were in custody of the police personnel, they have received serious injuries to the extent that Arjan and Harjog died on account of such injuries caused during the custodial interrogation and Injured Witness-Sharman has received serious injuries.

5. As per the investigation, in connection with the incident of house breaking at Samaghogha village, offence u/s-454, 457, 380 of IPC was registered on 28/12/2020 vide Part A CR no.1617/2020 at Mundra police station. In the aforementioned case, the deceased Arjan Gadhvi was brought on 12/01/2021, deceased Harjog Gadhvi and injured Shamra Gadhvi were brought on 16/01/2021 at the office of Mundra police station surveillance (D-staff) by the accused persons. In order to fulfill their common intention, the accused persons unlawfully kept them there till 19/01/2021. The accused police personnel have knowledge of the law and completely aware with the D.K.Basu judgment of the Supreme Court, yet they did not implement the same and they did not implement the provisions of sections 56, 57 of Cr.PC. The accused persons involved in this case, for interrogation and recovery of muddamal of theft and confession of house breaking from the deceased Arjan Kheraj Gadhvi, deceased Harjog Hari Gadhvi and injured witness Shamra Pabu Gadhvi, beat them with stick and belt, fist and kicks, threatened

with electric current, placed the rags of inflammable liquid on their body, caused injury to the genital of the injured person with the mobile charger cable and thus caused death of Arjan Kheraj Gadhvi and Harjog Hari Gadhvi and caused injuries to the witness Shamra Pabu Gadhvi.

6. During the investigation against accused Narvirsinh Ganpatsinh Sarvaiya, evidences have been found. The facts thereof are such that during the investigation of offence of house breaking and theft at Samaghogha, the policemen performing duty with the Surveillance Squad of Mundra Police Station brought three accused persons to their office and detained them unlawfully. On 12/01/2021, deceased Arjan Gadhvi and on 16/01/2021, deceased Harjog Gadhvi and witness Shamra Gadhvi, who was caused injuries, were brought to the office of surveillance squad at Mundra Police Station and they were detained there unlawfully. Accused Narvirsinh Ganpatsinh Sarvaiya used to visit the office of 'D' Staff at the police station frequently. He also used to accompany the policemen of 'D' staff during the raids and sign the panchnamas as a pancha witness. Accused Narvirsinh Ganpatsinh Sarvaiya used to do all the work which he was asked to do by the accused persons, who were the members of 'D' Staff, Shaktisinh Gohil, Ashok Kanad and Jaydevsinh Zala. At the office of 'D' Staff at Mundra Police Station, whenever the accused persons Shaktisinh Gohil, Ashok Kanad and Jaydevsinh Zala beat deceased Arjan Gadhvi, deceased

Harjog Gadhvi and Shamra Gadhvi who was caused injuries, with belts and sticks, accused Narvirsinh caught hold of the above noted two deceased persons and the injured person. Accused Narvirsinh Ganpatsinh Sarvaiya also used to beat them with blows of fists and kicks. On 16/01/2021, the accused persons Narvirsinh Ganpatsinh Sarvaiya, Ashok Kanad and Gafurji Thakor took Shamra Gadhvi, the accused of offence of theft who was caused injuries, to the waste land located at the tower near Pragpar-2 Patiya. They took Shamra Gadhvi there in the red colored Breeza car of accused Ashok Kanad for discovering muddamal. Thereafter, other accused persons Kapilbhai Desai, Viral alias Maraj, Shambhu Devraj Jaru took Arjan Gadhvi and Shamra Gadhvi there and searched for the muddamal of theft. When the muddamal was not found, Narvirsinh Ganpatsinh Sarvaiya had beaten Arjan Gadhvi and Shamra Gadhvi with stick. On 18/01/2021, the accused persons Narvirsinh Ganpatsinh Sarvaiya, Ashok Kanad, Jaydevsinh Zala and Jayveersinh Jadeja took Shamra Gadhvi, the accused of the offence of theft, in Ashok Kanad's Breeza car, to Samaghogha Vadi area for discovering the muddamal of theft. When the muddamal was not found there, accused Narvirsinh Ganpatsinh Sarvaiya beat Shamra Gadhvi with stick. Though the accused Narvirsinh Ganpatsinh Sarvaiya was knowing that Arjan Kherajbhai Gadhvi had died on 19/01/2021, he gave the car which was owned and possessed by him, bearing registration number GJ-12-DS-9250, to accused (1) Shaktisinh Yogendrasinh Gohil, (2) Ashok Liladhar Kanad and (3) Jaydevsinh

Ajitsinh Zala. As the accused persons were given the car for running away, they remained absconding for sixty five (65) days after committing an offence. Even when accused (1) Shaktisinh Yogendrasinh Gohil, (2) Ashok Liladhar Kanad and (3) Jaydevsinh Ajitsinh Zala were absconding, accused Narvirsinh Ganpatsinh Sarvaiya was constantly providing information to accused Jaydevsinh Ajitsinh Zala through whatsapp calls. He used to delete the call details after making calls with an intention to save the accused persons from being caught. He also remained absconding for twenty days for avoiding his arrest. Later, he was caught from Mt.Abu.

7. During the course of investigation of the offence of house-breaking and theft took place in Samaghogha village, the accused police personnel performing duty in the surveillance staff of Mundra Police Station brought deceased Arjan Gadhvi on 12/01/2021, deceased Harjog Gadhvi on 16/01/2021 and injured Shamra Gadhvi on 16/01/2021 and illegally detained them in the office of the surveillance staff of Mundra Police Station without following any legal procedure. During that period, though accused Shambhu Devraj Jaru was a GRD member, he visited the office of surveillance staff of Mundra Police Station four to five times during 12/01/2021 to 19/01/2021 and at the behest of accused Kapil Desai, interrogated the deceased and the injured witness and caused injuries to deceased Arjan Gadhvi and Harjog Gadhvi and injured

witness Samra Gadhvi by assaulting them on their private parts with a charger cable. On 16/02/2021, accused Shambhu Devraj Jaru, at the behest of accused Kapil Desai, took deceased Arjan Gadhvi to the open space near the tower situated behind Pragpar-2 Bus Stand in a car and interrogated injured Samra Gadhvi present there and searched for muddamal and when muddamal was not found, accused Shambhu Devraj Jaru beat deceased Arjan Gadhvi and injured witness Samra Gadhvi with stick and thereby, committed a criminal act.

8. The argument on behalf of the applicants regarding change in version of injured witness - Shamra will have to be viewed particularly, considering the fact that the injured witness though had not committed any offence was implicated in the offence. He was brutally beaten and the deceased persons, who are relatives of this injured witness were brutalized to such an extent that both the persons had died.

9. Over and above, the presence of both the applicants were shown when the deceased and the injured witness were taken near the canal where the police persons (accused persons) had beaten both the deceased and the injured witness brutally with sticks where the role is also attributed to both the applicants viz. Jayveersinh Jadeja and Narvirsinh Sarvaiya.

10. Over and above, injured witness himself is an eye-

witness and his version will have to be given due weightage and his versions prima facie implicate the applicants in the offence and attribute some role to them.

11. There are other independent witnesses also i.e. independent witnesses, who are accused in the police station in front of whom both the deceased and the injured witness were tortured. These witnesses narrates how from time to time both the deceased were taken out of the police station and were brought back in injured condition.

12. It would be appropriate to observe that the applicant is a policeman appointed as Gram Rakshak Dal. However, was having several antecedents, details of which are as under:-

Sr. No.	CR No.	Police Station	Sections
1.	I-CR No.30 of 2011	Mundar Police Station	325, 324, 323 and 114
2.	Prohi-CR No.5265 of 2011	Mundra Police Station	66(1)(B) and 65(E)
3.	Prohi-CR No.5283 of 2008	Anjar Police Station	66(1)(B) and 65(A)(E)
4.	Prohi-CR No.5008 of 2014	Anjar Police Station	66(1)(B) and 65(A)(E)

12.1 Though in all the aforesaid four offences, the applicant was later on acquitted, however, the fact that the applicant was working as GRD in a Police Station and having such antecedents, is sufficient to indicate conduct of the applicant.

13. Insofar as submission of learned Advocate for the applicant of there being 197 witnesses and as a result of which trial may get prolonged, learned Advocate for the complainant has placed on record that four of the accused persons had filed discharge applications, which have been rejected. However, on the ground of challenging such order in discharge applications before the higher forum by the accused persons, trial is being adjourned from time to time, despite objection of the prosecution on the ground that the High Court has expedited the trial. Learned Advocate for the complainant placed on record application dated 13.07.2022 in this regard. Therefore, it appears that the accused are responsible for prolonging the trial.

14. The Court also finds that the Sessions Court has assigned cogent and proper reasons while rejecting the bail application of the applicant.

15. In view of the aforesaid, no case is made out for exercising discretion in favour of the applicant. The application deserves to be and is hereby rejected. Rule is discharged.

SHITOLE

(A.Y. KOGJE, J)