IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION NO. 630 of 2022

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GOPALBHAI NARANBHAI @ NARUBHAI BHAGUBHAI RATADIYA

Versus

STATE OF GUJARAT

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Appearance:
MR PRATIK Y JASANI(5325) for the Applicant(s) No. 1
for the Respondent(s) No. 2
MR RC KODEKAR, ADDITIONAL PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE SAMIR J. DAVE**

Date : 04/07/2022

ORAL ORDER

1. Heard Mr. Pratik Y. Jasani, learned advocate for the petitioner and Mr. R.C. Kodekar, learned Additional Public Prosecutor for the respondent – State.

2. Rule. Learned APP waives service of Rule on behalf of the respondent – State.

3. By way of this application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, the petitioner has prayed for the following reliefs:-

> "(A) **YOUR LORDSHIPS** be pleased issue an appropriate writ, order or direction quashing and setting aside the order dated 27.05.2022 passed by

the learned Sessions Judge, Amreli below Exh.40 in Sessions Case no. 22/2021;

(B) Pending admission, hearing and final disposal of this petition, **YOUR LORDSHIPS** be pleased to stay operation, execution and implementation of the order dated 27.05.2022 passed by the learned Sessions Judge, Amreli below Exh.40 in Sessions Case no. 22/2021; and further be pleased to stay the proceedings of Sessions Case no. 22/2021;"

4. Brief facts of the case are as under:-

4.1 On 11.11.2019, an FIR bearing CR no. I-94/2019 came to be registered with Amreli City Police Station being for the offence punishable U/s. 302, 307, 323, 324, 506(2), 504, 143, 144, 147, 148, 149, 120B and 34 of the Indian Penal Code, 1860 as well as Section 135 of the Gujarat Police Act. It is alleged in the FIR that on 10.11.2019, in the morning hours, while the complainant as well as one of his relatives i.e. Ramesh Surabhai Makwana were on their way back after performing their routine work, they received a call from the Police Sub-Inspector, Sakariya and requested them to provide help in arranging manpower and to provide shelter to stray cows. It has been alleged that the complainant accordingly assisted the police. However, the complainant

faced an ire of various members of their caste and was trolled in a WhatsApp group. It has been alleged that the complainant and others thereafter visited the Police Station showing their inability to assist police as members of his caste were not happy. It has been alleged that the police requested the respondent no.2 to arrange meeting with the members of his caste and the same was arranged and in the said meeting, scuffle took place between various persons and one Shri Rameshbhai Trad, Shri Amrubhai Nanubhai and Shri Surabhai Kadabhai sustained injuries; however, Govindbhai Trad and Kiranbhai Makwana passed away.

4.2 Thereafter, the petitioner has been arrested by the police and the petitioner has fully cooperated with the investigation and the police has filed a charge-sheet against the petitioner on 07.02.2020 and filing of charge-sheet has resulted into registration of Sessions Case no.22 of 2021, which is pending consideration as on date before the learned Sessions Judge, Amreli.

4.3 The petitioner has been enlarged on regular bail on 29.10.2020 by the learned Sessions Judge, Amreli in the proceedings of Criminal Misc. Application no.501 of 2020.

4.4 It is the case of the petitioner that as no procedure as contemplated under Sections 225 and 226 of the Cr.P.C. was followed, one of the accused had preferred an application Exh.34 seeking directions against the prosecution to follow the procedure as contemplated in the aforesaid provisions. The learned Sessions Judge, Amreli, vide order dated 07.01.2022, has been pleased to allow the said application by directing the prosecution to follow the procedure prescribed under Section 226 and to open the case.

4.5 Pursuant to the directions issued by the Trial Court in the order passed below Exh.34, it was expected that the prosecution will follow the procedure contemplated under Section 226 of the Cr.P.C., however, as no such procedure was followed, an application Exh.39 was presented by some of the accused pointing out the said glaring lapse on the part of prosecution. The prosecution thereafter filed a report vide Exh.38, wherein it was contended that the prosecution relies upon all the documents and statements referred to in the charge-sheet. Merely stating that they are placing reliance on all the documents would not be sufficient for the prosecution to open the case as provided under Section 226 of the Cr.P.C.

However, the Trial Court, by passing an order dated 19.03.2022, dismissed the said application by accepting the contention of the prosecution that the report of placing reliance on all the papers of charge-sheet is in due compliance of the provisions of Section 226 of Cr.P.C.

4.6 The petitioner, thus, preferred an application at Exh.40 under Section 227 seeking discharge of the petitioner from the trial of the Sessions Case. However, the learned Sessions Judge, by passing the impugned order dated 27.05.2022 in Sessions Case no.22 of 2021, has rejected the application Exh.40.

4.7 Being aggrieved by the said order, the present Revision Application is filed.

5. Mr. Pratik Y. Jasani, learned advocate for the petitioner has contended as under:-

5.1 It is contended that the Trial Court was appraised by the petitioner about the fact that there is no material worth the name against the petitioner even if the entire case of the prosecution is believed to be true. The petitioner also placed heavy reliance on all the statements which are relied upon by the prosecution. It is contended that the

petitioner is merely arraigned as an accused on the ground of his presence at the scene of the offence. However, there is no allegation worth the name about the petitioner having participated in the offence by giving any blow to either the injured or to the deceased. The petitioner, by relying upon those statements, had projected a case that the petitioner is innocent and there are no evidence to put the petitioner to trial. The Trial Court was at least required to apply its mind and to test the case of the petitioner at least prima facie as to whether there is any involvement of the petitioner considering the case papers of charge-sheet. However, the merits of the case have not at all been discussed by the Trial Court, nor the contentions referred and relied upon by the petitioner in the application Exh.45 have been discussed.

5.2 It is contended that a plain reading of Section 227 of the Code of Criminal Procedure, 1973 which allows any accused to prefer an application for discharge demonstrates that if an accused is in a position to establish that upon consideration of the record of the papers relied upon by the prosecution if it is establishes that there is no sufficient ground for proceeding against the said accused, the said accused deserves an order of discharge

from further being tried. It is further contended that the Trial Court has not given any reason as to how the grounds urged by the petitioner are unwarranted or the documents submitted by the prosecution is sufficient for proceeding ahead against the petitioner.

5.3 It is contended that the Trial Court has come to a conclusion that as applications Exhs.34 and 39 are disposed of and as the said orders have attained finality, the application Exh.40 also deserves to be dismissed. It is contended that the application Exh.34 was allowed in favour of the accused by directing the prosecution to open the case and to follow the mandate of law and provisions of Section 226 of the Cr.P.C. and as the same procedure was not followed, the application Exh.39 was presented. It is further contended that neither Exh.34, nor Exh.39 are in the nature of praying for discharge. It is further contended that thus, the finding of the Trial Court that the application Exhs.34 and 39 having attained finality, the application Exh.34 also requires to be dismissed, is without application of mind.

5.4 It is contended that the petitioner had also contended before the Trial Court that the order passed by the Trial Court below Exh.34

has not been properly complied with and the prosecution is to open its case by giving brief idea as to on what material it proposes to try a particular accused. However, in the instant case, by merely filing a report, the prosecution has adopted the entire papers of charge-sheet, which is, in respectful submission of the petitioner, no compliance of the provisions of Section 226.

5.5 It is contended that Section 226 empowers any person who considers himself to be not guilty and the material so placed by the prosecution does not support the case of the prosecution, can move an application under Section 227 of Cr.P.C. Moving an application invoking the provisions of law, by no stretch of imagination, can be said to be a dilatory tactic. It is right of an accused to present a discharge application and the Trial Court has erred in coming to the conclusion that filing an application for discharge is a dilatory tactics.

5.6 Mr. Jasani, relying upon the decision in the case of **Manishaben Gajjugiri Goswami Vs. State of Gujarat**, decided in Criminal Revision Application No.245 of 2021, contended that this Court has discussed the ambit and purport of the provisions of Sections 226 and 228 of

the Cr.P.C. Mr. Jasani, therefore, submits that for the foregoing reasons, the prayers prayed for in the present petition may be granted.

6. Per contra, Mr. R.C. Kodekar, learned Additional Public Prosecutor for the respondent – State has contended that the impugned order passed by the Trial Court is just and proper and no interference is called for. Learned APP has contended that the entire material comprising of the charge-sheet along with the documentary evidence produced would make it clear that the petitioner has committed an offence for which he is required to be tried. Learned APP has further contended that by filing the discharge application, the petitioner has tried to delay the trial. Learned APP has also relied on the decision rendered by this Court in **Manishaben Gajjugiri Goswami** (supra) and therefore, in view of the above submissions, no error is committed by the learned Sessions Judge in rejecting the discharge application of the petitioner.

7. Having heard learned advocates appearing for the parties and having perused the material placed on record, it reveals from the record that the charge and framing of charge have been deferred time and again due to several

applications moved by the petitioner along with co-accused which ultimately seems to have been disposed of and the consequences follows from the order passed below Exh.34 and therefore, the petition preferred by the petitioner is nothing but an act to prolong the trial by one or another reason and it amounts to create hurdles in the smooth trial.

8. It further appears from the record that there is sufficient piece of evidence on the basis of which the guilt of the petitioner can be proved. Similar issues and contentions have been raised by the petitioner in the application filed by the petitioner along with the co-accused vide Exh.34, wherein the reference as to the statements and allegations to prescribe procedure before framing the charge.

9. It also evident from the record that the present petition is nothing but a delaying tactic as the application seems to have been deferred on several occasions, whereas the co-accused seem to have been assassinating and languishing in the prison wherein the charge till date has not been framed or followed by the commencement of the trial due to several applications moved by the petitioner. The entire material comprising of the charge-sheet

along with the documentary evidence have been produced and the same is sufficient for presuming that the petitioner has committed an offence for which he is required to be tried. Whatever submissions made by the learned advocate for the petitioner can be raised at the time of raising defence in the trial. Looking to the gravity and nature of offence, the petitioner is required to be tried for the charges levelled against him.

10. This Court even while considering the law and proposition laid down in the case of **Manishaben Gajjugiri Goswami** (supra) has gone through the same. The very purpose and the object of following the provisions of Sections 226 to 228 of the Cr.P.C. is to ensure the expeditious disposal of the Sessions Case so that the accused is discharged if there is no sufficient material against him or he can be tried quickly by following the due procedure laid down under Chapter-28 of the Cr.P.C.

11. This Court in the case of **State of Bihar Vs. Ramesh Singh**, reported in **AIR 1977 SC 2018** observed as under:-

> "4. Under section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by

what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. 'The Judge has to pass thereafter an order either under section 227 or section 228 of the Code. If "the Judge consider that there is not. sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by section 227. If, on the other hand, "the Judge is of opinion that there, is ground for presuming. that the accused has committed an offence which-

(b)in exclusively triable by the Court, he shall frame in writing a charge against the accused'-', as provided in section 228. Reading the two provisions together in juxta position, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under section 227 or section 228 of the Code.

At that stage the Court is not to 'see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the, initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. if the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the, trial, then, on the theory of

benefit of doubt the case is to end in his acquittal. But, if, on the other hand, it is so at the initial stage of making an order under section 227 or section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under section 228 and not under section 227.

12. This Court in the case of **State of Maharashtra Vs. Som Nath Thapa**, reported in **AIR 1977 SC 2018** observed as under:-

"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use. When can charge be framed ?

30. In Antulay's case, Bhagwati, CJ.,

opined, after noting the difference in the language of the three pairs of section, that despite the difference there is no scope for doubt that at the stage at which the Court is required to consider the question of framing of charge, the test of "prima facie" case has to be applied. According to Shri Jethmalani, a prima facie case even be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame charge against him for committing that offence".

31. Let us note the meaning of the word "presume". In Black's Law Dictionary it has been defined to mean "to believe or accept upon probable evidence". (Emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law "presume" means "to take as proved until evidence to the contrary is forthcoming" , Stroud's Legal Dictionary has quoted in this context a certain judgement according to which "A presumption is a probable consequence drawn from facts (either certain or proved by direct testimony) as to the truth of a fact alleged." (Emphasis supplied). In Law Lexicon by P. Ramanath Aiyer the same quotation finds place at page 1007 of 1987 edition.

32. The aforesaid shows that if on the basis of materials on record, a court

could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

What is the effect of lapse of TADA ?

33. In the written submissions filed on behalf of appellant Moolchand, it has been urged that TADA having lapsed, section 1(4) which saves, inter alia, any investigation instituted before the Act had expired, itself lapsed because of which it is not open to the prosecution to place reliance on this sub-section to continue the proceeding after expiry of TADA.

57. A perusal of the statement made by aforesaid two Inspectors shows that they had made two statements at two points of time. The first of these has been described as "original statement' by Shri Shirodkar in his written note and the second as "further statement". In the original statement, these two Inspectors are said to have told Thapa, on being asked which would be crucial places for laying trap, that the same were Purar Phata and Behan Phata, at which places trap was in fact laid. But

then, in the further statement the Inspectors are said to have opined that watch should be kept at Sai-Morba-Goregoan junction, because that was the main exit point for smuggling done at Shrivardhan and Shekhadi. Shri Shirodkar would not like us to rely on what was stated subsequently by these Inspectors, as that was under pressure of investigation undertaken subsequently by the C.B.I. We do not think that the law permits us to find out at this stage as to which of the two versions given by two Inspectors is correct. We have said so because at the stage of framing of charge probative value of the statement cannot be gone into, which would come to be decided at the close of the trial. There is no doubt that if the subsequent statement be correct, Nakabandi was done not at the proper place, as that left Sai-Morba Road free for the smugglers to carry the goods upto Bombay."

13. This Court in the case of **State of Maharashtra Vs. Priya Sharan Maharan**, reported in **AIR 1997 SC 2041** observed as under:-

"8. The law on the subject is now well-settled, as pointed out in Niranjan Singh Punjabi vs. Jitendra Bijjaya (1990) 4 SCC 76, that at Sections 227 and 228 stage the Court is required to evaluate the material and documents on record with a view of finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that

initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

11. The above quoted paragraphs from the judgment clearly disclose that the High Curt was much influenced by the submission made on behalf of the defence that Kripalu Maharaj is a saintly old man, who has renounced the world, who is engrossed in spiritual activity and who has thousands/millions of disciples all over India and, therefore, he was not likely to indulge in the illegal acts alleged against him. It failed to appreciate that it is not unusual to come across cases where the so-called spiritual heads exploit you girls and women who become their disciples and come under their spell. Moreover, the reasoning of the High Court that it also does not stand to reason that a saintly man who has thousand/millions of disciples all over India would commit sexual intercourse with the praharak of his cult in presence of his disciples stands vitiated because of the vice of misreading the statements. The three girls have nowhere stated in their statements that R-2 had sexual intercourse with them in presence of other disciples. The High Court gave

too much importance to the conduct of the three victims and the delay in disclosing those illegal acts to their parent and the police. What the High Court has failed to appreciate is how a victim of such an offence will behave would depend upon the circumstances in which she is placed. It often happens that such victims do not complain against such illegal acts immediately because of factors like fear or shame or uncertainties about the reactions of their parents or husbands in case of married girls or women and the adverse consequences which, they apprehend, would follow because of disclosure of such acts. What the three girls had stated in their statements was not inherently improbable or unnatural. They have disclosed the reasons why they could not immediately complain about those illegal acts for such a long time. What the High Court has failed to appreciate is that while making complaint to the police or giving their statements they were not required to give detailed explanations. As stated earlier, what the Court has failed to appreciate is that while making a complaint to the police or giving their statements they were not required to give detailed explanations. As stated earlier, what the Court has to consider at the stage of framing of the charge is whether the version of the person complaining together with his/her explanation is prima facie believable or not. It was, therefore, not proper for the High Court to seek independent corroboration at that stage and to quash the charge and discharge the accused in absence thereof. It was also improper to describe the version of Sulakshana as false because no

> extensive injuries were noticed on her person while she was examined by a doctor on the basis of some observations made in Modi's textbook on "Medical Jurisprudence and Toxicology". We do not think it proper to say anything further as, in the view that we are taking, the accused will have to face a trial and whatever observations we make now may cause some prejudice to them at the trial. We would only say that the High Court was wholly wrong in discarding the material placed before the Court as false and discharging the accused on the ground."

14. Thus, in view of the above decisions and discussions made hereinabove, the impugned order does not suffer from any illegality, irregularity or impropriety and the Revision is liable to be dismissed and is hereby dismissed. Rule discharged.

(SAMIR J. DAVE,J)

Maulik