

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION NO. 15105 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 15124 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 15127 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 15158 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 15159 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 15161 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 15165 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 15168 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 15169 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 15170 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 15225 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 15233 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 15558 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 15771 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 15772 of 2022

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CHANDUBHAI FAKIRBHAI PATEL
Versus
STATE OF GUJARAT
=====

Appearance:
MR ND NANAVATI, LD. SR. ADVOCATE; MR MIHIR JOSHI, LD. SR. ADVOCATE; MR. AMIT DESAI, LD. SR. ADVOCATE, MR. R.S. SANJANWALA, LD. SR. ADVOCATE, MR JAL UNWALLA, LD. SR. ADVOCATE APPEARING **WITH** MR RAHUL DHOLAKIA; MS T. A. VASHI; MR SHAHIL A SARWANI FOR THE APPLICANTS

MR MITESH AMIN, LD. PUBLIC PROSECUTOR WITH MR LB DABHI AND MR RONAK RAVAL APPs for the Respondent(s) No. 1 in all the matters
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CORAM:**HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**

Date : 15/09/2022

COMMON ORAL ORDER

1.Heard learned Senior Advocate Mr.Amit Desai, learned Senior Advocate Mr. N. D. Nanavati, learned Senior Advocate Mr.Mihir Joshi, learned Senior Advocate Mr. R. S. Sanjanwala, learned Senior Advocate Jal Unwalla for the applicants in respective applications and learned Public Prosecutor Mr.Mitesh Amin appearing with learned APP Mr. L. B. Dabhi with Mr.Ronak Raval for the respondent State.

2.Issue **Rule** returnable forthwith, in Criminal Misc. Applications No.15771, 15772 and 15558 of 2022. Learned APP waives service of notice of Rule for the respondent State.

3.The applicants apprehending their arrest in connection with 3 different FIRs namely (1) **FIR No.11192018220218/2022 registered with Dhandhuka Police Station, District Ahmedabad**

(Rural) on 26.7.2022 for the offences punishable under Sections 302, 328, 120B of IPC and 67-1A of Gujarat Prohibition Act; (2) **FIR No.11190001220293/2022 registered with Barwada Police Station, District Botad on 26.7.2022** for the offences punishable under Sections 302, 328, 120B of IPC and 67-1A of Gujarat Prohibition Act; and **FIR No.11190006220446/2022 Ranpur Police Station, District Botad on 26.7.2022** for the offences punishable under Sections 302, 328, 120B of IPC and 65(a) and 67-1A of Gujarat Prohibition Act, have preferred these applications praying for grant of pre-arrest bail.

4.It would be pertinent to mention here that originally while the FIR, lodged with the Dhandhuka Police Station, had been registered alleging commission of offence punishable under Sections 302, 328, 120B of IPC and 67-1A and whereas the Investigating Officer had submitted report dated 3.8.2022 for addition of

offences punishable under sections 304, 308, 120, 118, 201, 202, 284, 34 of IPC and Sections 81 and 83 of Gujarat Prohibition Act and whereas vide order dated 4.8.2022, the learned Additional Chief Judicial Magistrate, Dhandhuka had directed the report to be kept with the FIR.

5.It is noted that since the allegations made in all 3 FIRs are more or less the same, and whereas since the apprehension of the applicants is based, in all 3 FIRs, upon a single set of transaction, therefore, to avoid repetition and for the sake of brevity, these applications concerning 3 different FIRs are being decided by the present common order.

6.In all the FIRs in question, the allegations *inter alia* are about commission of offences, which are in the nature of selling spurious country made liquor that has unfortunately resulted in the death of 46 persons in total, and injuries being caused to 82 persons. During the course of investigation, it was revealed

that the spurious country made liquor was, in fact, made from a poisonous chemical named methyl alcohol, and whereas it was also revealed that the said methyl alcohol was sold by an employee of a Company named M/s.Amos Corporation, which was *inter alia* engaged in the business of bottling methyl alcohol. The applicants before this Court being one Managing Director, three Directors and an employee of the company in question, (other than the employee, who had actually allegedly sold the ethyl alcohol, who has already been arrested).

7. Before advertizing to the facts, it would pertinent to mention that both the sides namely learned Sr. Advocates for the applicants and learned Public Prosecutor for the respondent State have made lengthy arguments on various issues and whereas, in the considered opinion of this Court, since a decision in a pre-arrest bail application does not envisage meticulous examination and findings on facts and law, the submissions of both the sides are referred to

in brief.

8.Submissions on behalf of the applicants:

8.1. Learned Sr. Advocate Mr.Desai for the applicant - Managing Director of the Company in question would submit that an employee of the Company, one Mr.Jayesh Khavadiya, who was also the authorized person of the Company for dealing with the methyl alcohol, appears to have stolen around 600 ltrs of methyl alcohol from the premises of the Company and appears to have sold the methyl alcohol to some of the other co-accused, who in turn had sold it to some of the other co-accused and whereas the said co-accused, who were in the business of selling country made liquor, had mixed water with the methyl alcohol and sold it to their customers. Learned Sr. Advocate Mr.Desai would submit that as far as the applicants are concerned, the allegations with regard to sale of methyl alcohol started with Jayesh and ended with Jayesh.

It is submitted that the Company in question has all the requisite permissions and licences, more particularly licence in the form of MA-1 and MA-2 under the Gujarat Prohibition Act, 1949 and whereas it is not the case of any of the authorities that the Company in question was dealing with the substance i.e. methyl alcohol without any requisite permission. Learned Sr. Advocate Mr.Desai would submit that as a matter of fact, the accused Jayesh i.e. the employee of M/s.Amos Corporation was otherwise a trusted employee of the Company and as per the provisions of the Gujarat Prohibition Act, the said accused Jayesh was an authorized person, more particularly a Nokarnama/nomination being issued by the Company naming the said accused Jayesh Khavadiya and approved by the authorized officer of the Prohibition, Abkari and Methanol Department.

8.2. Learned Sr. Advocate Mr.Desai would submit

that while the FIR *inter alia* alleges offences punishable under Section 302, as such there is no such allegation against the applicant Managing Director, which could be co-relatable to the offence punishable under Section 302, and whereas commission of offence under Section 304, which is alleged in **FIR No.11192018220218/2022** registered with Dhandhuka Police Station may be the offence, which could be invoked against the applicant – Managing Director.

8.3. Learned Sr. Advocate Mr.Desai would submit that while again Section 304 (Part-I) could not have been invoked against the applicant and more particularly since there is not act which is alleged to have been committed by the applicants with the intention of causing death. Learned Sr. Advocate would submit that even with regard to an offence punishable under Section 304 (Part-II) an essential ingredient for alleging such an offence is that the act must have been done with the knowledge that

such act was by itself likely to cause death. It is submitted that the allegation being that an employee namely Jayesh had stolen the methyl alcohol from the premises of the Company, and whereas since the applicants have been sought to be arraigned only on the ground that the applicants being Managing Director, Directors or employee of M/s.Amos Corporation, they have been unnecessarily sought to be apprehended. Learned Sr. Advocate Mr.Desai would submit that as such there is no material to show that the applicants had, in any manner, committed the act in question, more particularly with the knowledge that the act of sale of methyl alcohol would cause death but without any intention to cause death. Learned Sr. Advocate in support of such submission would rely upon the decision of the Hon'ble Apex Court in case of **Keshub Mahindra Vs. State of M.P., reported in (1996) 6 SCC 129, Samsher Khan Vs. State (NCT) of Delhi,**

reported in (2000) 8 SCC 568, in case of Shiv Kumar Jatia V. Staff of NCT of Delhi, reported in (2019) 17 SCC 193, in case of Joseph Kurian Philip Jose v/s State of Kerala, reported in reported in (1994) 6 SCC 535, in case of M/s. Cheminova India Ltd. & Anr. Vs. State of Punjab and Anr., reported in (2021) SCOnline SC 573 and a decision of this Court in case of Dharmendrabhai @ Bakabhai Joitaram Patel Vs. State of Gujarat in Criminal Misc. Application No.5325 of 2013.

8.4. Learned Sr. Advocate Mr.Desai would further submit that while the Company had been handling methyl alcohol since 2008 and whereas the present bottling of methyl alcohol having started since 2019 and since there has been no breach of duty, as alleged, at the most, assuming without admitting, what could be alleged against the applicant was an offence punishable under Section 304-A that is for causing death by negligence,

which also is a bailable offence.

8.5. Learned Sr. Advocate would thereafter refer to Sections 65A and Section 79 of Gujarat Prohibition Act. Learned Sr. Advocate Mr.Desai would submit that Section 65A *inter alia* states with regard to punishment for *Laththa*. *Laththa* being defined as spurious liquor containing methanol or other poisonous substance, which may cause harmful or injurious effects to the human body. It is submitted that Section 65A(3) *inter alia* states with regard to a person supplying material for manufacture of *Laththa*, which could be the allegation that could be levelled against Jayesh, since Section 65A(1) envisaging punishment for manufacturing, transporting or having possession of *Laththa* and Section 65A(2) specifying the punishment for manufacture, sale, etc., of *Laththa*, more particularly where there is a death on consumption of *laththa*, both of the contingencies may not be applicable to Jayesh and, in any case,

would not be allegations, which could be levelled against the applicants.

8.6. Insofar as Section 79 of the Gujarat Prohibition Act is concerned, the same, according to the learned Sr. Advocate, is with regard to liability of the licensee for acts of his servant. It is submitted that the said Section makes a licensee vicariously responsible and whereas the licensee is made as responsible as the actual offender for any offence committed by his employee for acting with his express or implied permission, unless the licensee establishes that all due and reasonable precautions were exercised. It is submitted that the person who was handling the methyl alcohol on day-to-day basis was Jayesh, i.e. the accused who has been arrested and whereas a *Naukarnamu*/nomination was also issued in his favour approved by the Department. It is also submitted that an employee, Rajendra Dasadiya, who is a B.E. (Chemical) Engineer was also

appointed as a Supervisor over Jayesh and whereas a *Naukarnamu*/nomination was also issued in favour of the other employee. It is submitted by the learned Sr. Advocate Mr.Desai that all such due and reasonable precautions were exercised by the applicants and, therefore, there may not be a reasonable cause to allege commission of offence punishable under Section 79 against the applicants. Learned Sr. Advocate would further rely upon proviso to Section 79, which *inter alia* states that no person, other than the actual offender, shall be punished with imprisonment, except such person, other than the offender, committing default of payment of fine. It is, thus, submitted that even as far as vicarious liability is concerned, except the licensee committing a default in payment of fine, the licensee would not be sentenced with imprisonment. Learned Sr. Advocate would further submit that a plain reading of the proviso making

it clear that the offence being bailable the applicant may be considered for release on anticipatory bail.

8.7. Learned Sr. Advocate would also submit in this regard that while due and reasonable precaution had been taken, the applicant could not be alleged to have not taken impossible precautions with regard to handling of methyl alcohol. It is submitted that *prima facie* Jayesh had stolen methyl alcohol and for such an act, the applicants could not be stated to have not taken due and reasonable precautions when all precautions which would have been taken in normal course of business, had been taken by the applicant.

8.8. Learned Sr. Advocate would also refer to the affidavit by the Investigating Officer, which *inter alia* states about the applicants neither having remained present nor produced any documentary evidence. It is submitted that as far as the

documentary evidence part is concerned, the entire record of the Company has been seized by the Prohibition Department and, therefore, there was no document available with the applicants.

8.9. Learned Sr. Advocate also refer to paragraph 10.1 of the affidavit, more particularly with regard to an amount of Rs.35 lac having been paid to accused Jayesh within a period of three years, *inter alia* implying that the applicants are in connivance with Jayesh. It is submitted by the learned Sr. Advocate that the said amount, as rightly mentioned in the affidavit-in-reply, has been paid over a period of three years. Over and above the same, it is submitted that Jayesh, who is supervising the bottling of the methyl alcohol was also paying salary to labourers/workmen, who are engaged in the said operation and whereas the amount of Rs.35 lac spread over a period of three years also includes such amount which was paid by Jayesh to other labourers/workmen.

8.10. Learned Sr. Advocate would also take this Court through the decision of the Hon'ble Apex Court in case of **Sushila Aggarwal and others Vs. State (NCT of Delhi) and another, reported in (2020) 5 SCC 1**, more particularly elaborating the observations of the Hon'ble Apex Court in support of his contention as to why custodial interrogation of the applicant is not required. Learned Sr. Advocate would also refer to a decision of this Court in case of **Girishbhai Maganlal Pandya Vs. State of Gujarat in Criminal Misc. Application No.2942 of 2014 dated 23.3.2015**, in support of his submission and would request this Court to release the applicant on pre-arrest bail.

8.11. Learned Sr. Advocate Mr.N. D. Nanavati, learned Sr. Advocate Mr.Mihir Joshi, learned Sr. Advocate Mr.R. S. Sanjanwala and learned Sr. Advocate Mr.Jal Unwalla on behalf of the other applicants would submit that the applicants are

independent/non-Executive Directors. In this regard, financial statements of M/s.Amos Enterprise Pvt. Limited of which M/s.Amos Corporation is a sub-entity, is relied upon to show that while the applicant of Criminal Misc. Applications No.15158, 15772 and 15170 of 2022 was the Managing Director, and whereas applicant of Criminal Misc. Applications No.15165, 15169, and 15771 of 2022 being the employee, all other applicants are shown as Independent Directors or non-Executive Directors, as the case may be. It is submitted that paragraph 8 of the affidavit-in-reply lists the grounds against the applicants, more particularly having regard to provisions of Section 79 of the Gujarat Prohibition Act. It is submitted that paragraph 8(i) *inter alia* alleges that the Company knew about the shortfall on basis of E-mails sent by M/s.Finar Limited i.e. the supplier of Methyl Alcohol and whereas no corrective steps were taken. Paragraph 8(j) *inter alia* states that

since the bank account of M/s.Amos Corporation also showed the Managing Director as well as the independent Director and Executive Directors as authorized persons for financial transactions, therefore, it should not be contended by the independent, non-Executive Directors were not engaged in day-to-day affairs of the Company. Paragraph 8(k) states about the criminal negligence on part of the applicants in engaging a 10th Pass person i.e. Jayesh for handling the substance, which was extreme poisonous.

8.12. Learned Sr. Advocate Mr.Joshi would submit that while the applicants, whom he represents, are independent non-Executive Directors and whereas, in any case, insofar as the allegations with regard to shortfall and allegations with regard to negligence in appointing a 10th pass person i.e. co-accused Jayesh to handle the poisonous substance, has already been touched upon by learned Sr. Advocate Mr.Desai appearing

for the Managing Director and whereas insofar as the aspect with regard to independent Directors being authorized to make financial transactions on behalf of the Company or attending Board Meetings of the Company, by itself would not denude the applicants of the status of persons of Directors not engaged in the day-to-day affairs of the Company in question.

8.13. Learned Sr. Advocate Mr.Joshi would further rely upon Section 299 of IPC, which states about culpable homicide. Learned Sr. Advocates would submit that Section 299 envisages certain acts being done by a person causing death or bodily injury etc., and whereas learned Sr. Advocate would also refer to Section 32 of IPC i.e. with regard to general explanations and would submit that Section 32 *inter alia* states that except where a contrary intention appears, the words which refer to an act being done would also extend to illegal omissions. Learned Sr. Advocates would

submit that considering the definition of culpable homicide, which requires positive acts to be committed by the accused, in the same manner the illegal omission should also be a specific omission and whereas mere negligence would not make out a case of criminal negligence against the independent, non-Executive Directors. Learned Sr. Advocate Mr.Mihir Joshi, in support of such contention would rely upon the decision of the Hon'ble Apex Court in case of **Shantibhai J. Vaghela & Anr. Vs. State of Gujarat and Anr., reported in (2012) 13 SCC 231.**

8.14. Learned Sr. Advocate Mr.Joshi would also reiterate the submissions made by the learned Sr. Advocate Mr.Desai that for bringing the applicants under the ambit of an offence punishable under Section 304 of IPC, there has to be a specific breach of duty alleged, which breach of duty was proximate cause of death. It is submitted that the allegation of general omission to do a particular

duty may not suffice. Learned Sr. Advocate would thereafter rely upon the decision of the Hon'ble Apex Court in case of **Kurban Hussein Mohammedali Rangwalla Vs. State of Maharashtra, reported in 1965 (2) SCR 622** to submit that even for alleging an offence under Section 304A, it should be shown that the death was the direct result of rash and negligent act of the accused and whereas the act concerned must be proximate cause of the death without involvement of negligence of another. It is submitted that such act on part of the present applicants i.e. the independent Directors/non-Executive Directors is not found anywhere. Learned Sr. Advocate Mr.Joshi would, therefore, submit that as no case for custodial interrogation of the independent, non-Executive Directors being made out, this Court may consider releasing them on pre-arrest bail.

8.15. Learned Sr. Advocate Mr.Jal Unwalla on

behalf of the applicant of Criminal Misc. Application No.15165, No.15771 and No.15169 of 2022 would submit that the applicant was an employee of the Company namely M/s.Amos Corporation. It is submitted that the present applicant is holding a degree of B.E. (Chemical) and has experience of over 23 years in this field. Learned Sr. Advocate would submit that while the allegation is insofar as the said applicant is that he was not remaining present or available for investigation as found at paragraph 8(d) of the affidavit-in-reply. It is submitted that as against the present applicant, no allegation of even negligence has been made in the affidavit-in-reply. It is submitted by the learned Sr. Advocate that from the facts it would appear that the methyl alcohol had been stolen by Jayesh from the premises of the Company and had later on sold it to other co-accused. It is submitted that while the present applicant was appointed as Supervisor,

including over Jayesh and whereas when the allegation is that the junior employee had stolen the offending chemical in question, no criminality could be presumed, more particularly there being no positive act or even positive omission alleged against the applicant concerned. Thus submitting learned Sr. Advocate has requested this Court to release the applicant on pre-arrest bail.

9.Submissions on behalf of the State:-

9.1. These applications are vehemently contested by the learned Public Prosecutor Mr.Mitesh Amin appearing with learned APPs Mr.Dabhi and Mr.Raval for the respondent State. Learned PP would submit that the investigation till now has revealed that the methyl alcohol which had been sold by the bootleggers as country made liquor resulting in 46 deaths and 82 injuries had originated from the godown of the Company in question, where the applicants are Managing

Director, Directors or employee. It is submitted that while an attempt is being made to submit that methyl alcohol was stolen from the factory premises, there is no material to show that the applicants have taken any action with regard to such theft. Learned PP would, in this regard, submit that such statements made by persons apprehending their arrest require a closer scrutiny.

9.2. Learned PP would further submit that while reliance is placed on Section 65A of Gujarat Prohibition Act to submit that the material for manufacture of *laththa* had been supplied by Jayesh and not the applicant, there is as such no material or basis to make such a submission, more particularly when investigation has revealed that the methyl alcohol had originated from the factory premises of the applicants.

9.3. Learned PP would submit that financial records of M/s.Finar Limited were analyzed and it would

reveal that there is a shortfall of 2604 ltrs of methyl alcohol, comparing the quantity sent and the quantity received from M/s.Amos. Learned PP would submit that only a custodial interrogation would reveal the details with regard to such shortfall.

9.4. Learned PP would also refer to the licence Form MA-1 more particularly Condition No.5(1) and 5(2) and would submit that the licence imposes a prohibition on the licensee. Learned PP would submit that Condition No.5(1) and 5(2) *inter alia* prohibiting use of methyl alcohol for making a beverage or as a mixture with a beverage or partially as a beverage or as an ingredient in any medicine. Learned PP would submit that such being the exact nature of prohibition, having regard to the fact that methyl alcohol had been used in preparation of the laththa as a beverage, the licensee i.e. the Managing Director and other Directors cannot be heard to state that they did

not have any role in the entire episode. Learned PP would also submit that as far as *Naukarnama*/nomination is concerned i.e. for a limited purpose and whereas more particularly because the person who had allegedly stolen the methyl alcohol was a nominated/authorized person, the applicants cannot be heard to contend that they may not be liable for the incident in question. Learned PP would submit that insofar as the said person i.e. Jayesh, who has stolen the material in question it appears that he had received approximately Rs.35 lac in last three years and whereas In last one year he has received Rs.9 lac in his bank account from the applicant Company. It is submitted that custodial interrogation is also required to find out the exact nature of the transactions.

9.5. Learned PP would also submit that Section 79 of the Gujarat Prohibition Act clearly imposes a liability on the licensee for any act done by a

person employed by him and whereas in view of such a specific provision the applicants cannot be heard to state that the applicants cannot be held vicariously liable. Learned PP would also supply certain documents collected during the investigation, more particularly showing the presence of the independent/non-Executive Directors in the Board Meeting of the Company. Learned PP would submit that independent/non-Executive Directors having financial authority and attending almost 75% to 100% of the Board Meetings of the Company would show that though they were appointed as independent/non-Executive Directors, yet they were engaged in day-to-day affairs of the Company.

9.6. Learned PP would also submit that a custodial interrogation is elicitation oriented and an interrogation with protection would reduce the interrogation to a mere ritual. Learned PP in this regard would refer to a decision of the Hon'ble

Apex Court in case of **State through CBI Vs. Anil Sharma, reported in (1997) 7 SCC 187.**

Learned PP would further contend that grant of anticipatory bail to the applicants, more particularly when the investigation is in progress would prejudice the full, fair and proper investigation and hence, it is requested that this Court may not exercise discretion in favour of the applicants.

9.7. Learned PP would submit that insofar as the decision relied upon by the learned Sr. Advocate for the applicants, except the decision of the Hon'ble Apex Court in case of **Sushila Aggarwal and others** (supra), all other judgements may not be relevant, more particularly such decisions being passed at the stage of quashing of complaints under Section 482 or at various other stages and whereas none of the decisions would be at a stage where the Court was considering a plea for grant of pre-arrest bail.

9.8. Learned PP would submit that insofar as decision of **Shiv Kumar Jatia** (supra) is concerned, the said decision was in context of an application for quashing of a complaint under Section 482 of Cr.P.C., after the charge-sheet had been filed, whereas in the instant case, the investigation is not complete. Insofar as the decision of **Joseph Kurian Philip Jose** (supra), it is submitted by the learned PP that the decision of the Hon'ble Apex Court was against the judgement of the Kerala High Court, whereby the appellants were convicted. Learned PP would also submit that while the facts of the case was also with regard to persons dying after consuming spurious liquor and whereas it is submitted that from the observations of the Hon'ble Apex Court, it appears that the liquor was adulterated with methyl alcohol to the extent of 2.64%. Learned PP would submit that as against the same, it is revealed that the spurious liquor which had been consumed by the

deceased and the injured contained methyl alcohol to the extent of 97-98%.

9.9. Learned PP would also submit that decision of the Hon'ble Apex Court in case of **M/s. Cheminova India Ltd. & Anr.** (supra) was also in context of a quashing application under Section 482 of Cr.P.C. It is submitted that insofar as the decision in case of **Shantibhai J. Vaghela & Anr.** (supra), the decision was again in context of a quashing application. It is further submitted that the decision of the Hon'ble Apex Court in case of **Kurban Hussein Mohammedali Rangwalla** (supra) was the decision against conviction of accused. Learned PP would submit that having regard to the said decisions that since the observations of the Hon'ble Apex Court were at a completely different context, therefore, the decision would not be in any manner applicable.

9.10. Learned PP would also submit that insofar

as Criminal Misc. Application No.5325 of 2013 is concerned, while the decision was rendered in context of an application under Section 482 of Cr.P.C., at the same time from the decision it appears that impeccable scientific material had been placed before this Court, which had weighed with the Court and such not being the situation in the instant case. It is also insofar as the decision in case of **Girishbhai Maganlal Pandya** (supra), it is submitted that the decision was rendered in context of an application under Section 482 of Cr.P.C., more particularly challenging the order whereby the Sessions Court had rejected discharge application filed by the applicants. It is submitted by the learned PP that as of now the investigation is open and what would be the charge that would be levelled against the applicants is not discernible at this stage. Hence, a decision given by this Court, where order of discharge was challenged, may not be helpful to

the applicants.

9.11. Learned PP would submit, in conclusion, that even considering the submissions of the applicants, it is clear that the methyl alcohol, which had caused around 46 deaths and 82 injuries, had originated from the factory of the applicants. Learned PP would submit that since no special circumstances has been shown by the applicants for grant of pre-arrest bail and having regard to the fact that investigation has *prima facie* revealed some role of the applicants, therefore, this Court may not exercise discretion in favour of the applicants.

10. **Applicants in Rejoinder**

10.1. Learned Sr. Advocate Mr.Desai, in rejoinder, would take this Court through the decision of the Hon'ble Apex Court in case of **Sushila Aggarwal and others** (supra) and would submit that the theory of power to be exercised

under Section 438 of Cr.P.C., only in exceptional circumstances has been put to rest in the decision of the Constitutional Bench in the said decision. It is submitted that the Hon'ble Apex Court has clearly observed that the accused is not required to make out a special case for grant of anticipatory bail. Learned Sr. Advocate Mr.Desai, as regards the amount of Rs.35 lac, which were travelled to Jayesh, would reiterate his submission that the same was for a period of three years and whereas Jayesh was incharge of labourers, who were doing this work. Learned Sr. Advocate would also submit that as far as the dealing between M/s.Amos Corporation and M/s.Finar Limited is concerned, there does not appear to be any shortfall and whereas it is submitted that the Companies used to reconcile their books of accounts regularly and as a matter of fact, till recently i.e. up to May - June 2022 books of accounts have been reconciled. It is also submitted that as far as the

shortfall is concerned, the Companies have devised a system whereby the Companies in question would immediately refer to the other Company on E-mail about the short fall and appropriate reconciliation would be done. Learned Sr. Advocate has also relied upon certain E-mails to show that as and when E-mail had been sent by M/s.Finar Limited showing shortfalls the same had been replied and ultimately a satisfactory conclusion had been arrived at between both the parties that there being no shortfalls.

10.2. It is also submitted by the learned Sr. Advocate that while the books of accounts of M/s.Finar Limited had been looked into by the Chartered Accountants appointed by the Investigating Agency who had come to a conclusion about 2600 ltrs of methyl alcohol being short, but at the same time books of accounts of M/s.Amos Corporation had not been verified.

10.3. It is submitted that as such Gujarat Methyl Alcohol Rules 1981, more particularly Rule 6(7) *inter alia* permits writing off loss in transit or shortage up to 5% subject to the licensee informing Licensing Authority within 96 hours from the time of arrival of methyl alcohol consignment when such transit loss exceeds 5%. It is submitted by the learned Sr. Advocate Mr.Desai that the shortfall of 2604 ltrs as could be discernible from the submissions of learned PP is of the duration of over three years and considering the extent of the total transaction between the parties would only come to around 0.15% of the transaction between the Companies during the said period. Learned Sr. Advocate would submit that the said loss being within the permissible criteria of 5%, which could be written off as loss without prior permission of the Licensing Authority, such an alleged shortfall ought not to be a reason for which custodial interrogation of the applicants is sought for.

10.4. Learned Sr. Advocate has also referred to the decision of the Hon'ble Apex Court in case of **S.M.S. Pharmaceuticals Ltd vs Neeta Bhalla & Anr, reported in (2005) 8 SCC 89** and in case of **Sunil Bharti Mittal vs CBI, reported in (2015) 4 SCC 609** in support of his submission that the Directors and/or the Managing Directors could not be held responsible vicariously. Having regard to such submissions, learned Sr. Advocate would once again reiterate that this Court may consider releasing the applicants on pre-arrest bail.

10.5. Learned Sr. Advocate Mr.Desai would further submit that the act in question i.e. methyl alcohol which had originated from the Company of the applicants having been sold as spurious liquor resulting in death of 46 persons and injury caused to around 82 persons was absolutely unfortunate. Learned Sr. Advocate would submit that the applicants, without admitting or accepting the

liability and without accepting any wrong doing and expecting any concession from this Court on that count, would submit that just with a view to provide some succor to the family members of the deceased and some assistance to the injured persons, the applicants are ready and willing to deposit an amount of Rs.2.20 crore in the ratio of Rs.3 lac per deceased and Rs.1 lac per injured person, which may be appropriately directed to be distributed by this Court. Learned Sr. Advocate would further submit that such deposit of the amount is absolutely voluntary and whereas in case at a later stage in any proceedings if the applicants are found liable to pay any fine or compensation with regard to the present incident, then they will not request the said amounts deposited to be set off against such fine or compensation. Learned Sr. Advocate would also submit that an additional affidavit would also be filed by the Managing Director undertaking to

deposit such amount before any authority as may be deemed appropriate by this Court. After hearing of this application had concluded, an affidavit of the applicant of Criminal Misc. Application No.15170 of 2022, i.e. the Managing Director of the Company had been filed showing willingness to contribute an amount of Rs.2.20 crore to the victims.

11. At this stage, at the direction of this Court, the learned PP has tendered the statement of Mr. Jayesh Khavadiya i.e. the accused who is alleged to have actually taken the methyl alcohol from the premises of the Company and sold it to other co-accused, recorded immediately after his arrest and also a statement recorded under Section 164 of Cr.P.C. Both the statements have been perused by this Court.

12. Heard learned Advocates for the respective parties. Perused the documents on record, including

the investigation papers as well as the statement under Section 164 of Cr.P.C., of one of the accused as referred to herein above.

13. While this Court does not intend to discuss the material and evidence in detail, suffice it to state that the following aspects have been taken into consideration by this Court for deciding these applications;

13.1. While this Court has considered the submissions made on behalf of the applicants and the State, as well as the statements of Jayesh Khawadiya both before the Investigating Officer as well as before the Judicial Magistrate, it appears to this Court that the statement of Jayesh is one of the most crucial aspects that would decide the role of the present applicants;

13.2. It *prima facie* appears from the statements of Jayesh both before the I.O., and particularly in his statement under Section 164 of Cr.P.C., that

Jayesh had sold 600 ltrs of methyl alcohol to the co-accused for a consideration of Rs.41,500/-. It appears that before the said transaction he had sent a small quantity i.e. 1 ltr., of methyl alcohol to the said co-accused for testing as a sample. It also appears that the entire operation i.e. of calling the auto-rickshaw, loading auto-rickshaw, taking the material to the destination spot and handing over the material and taking the cash had been done by Jayesh. It also appears from the statement, more particularly under Section 164 that Jayesh had expressed regret and remorse over his act.

13.3. It also appears that the transaction of selling Methyl Alcohol was not a continuous transaction, more particularly in view of the fact that prior to 600 ltrs. being stolen and sold, Jayesh had, for the first time, given 1 ltr., methyl alcohol as a sample to the co-accused for testing;

13.4. Insofar as the applicants are concerned, it *prima facie* appears to this Court that there is no material to allege commission of offence under Section 302 of IPC;

13.5. It further appears to this Court that *prima facie* there is no material either alleged in the FIR or gathered during investigation, whereby *prima facie* involvement of the applicants for offences punishable under Section 304 (Part-I) of the IPC could be alleged;

a) It appears that while there is no overtact attributed to the present applicants done with the intention of causing death, even insofar as an omission of not doing any particular act is concerned, *prima facie* there does not appear to be any intention, which could be attributed to the present applicants;

13.6. Having regard to the decisions of the Hon'ble Apex Court in case of Keshub Mahindra

(supra), Samsheer Khan (supra), Shiv Kumar Jatia (supra), as also the view taken by this Court in Criminal Misc. Application No.5325 of 2013, referred to herein above, *prima facie* for alleging an offence under Section 304(Part-II) an essential requirement would be that the accused had a knowledge that by committing such an act of commission or omission death was likely to be caused. *Prima facie* it appears to this Court that there is no allegation against the applicants of committing any particular act with the knowledge that the same would cause death;

13.7. Such observation, notwithstanding the contention of the learned PP Mr.Mitesh Amin that there has been a shortfall of around 2600 ltrs., of methyl alcohol and whereas it appears to this Court that such shortfall was spread over a period of three years and well within the permissible limits of writing off, as found in Rule 6(7) of the Gujarat Methyl Alcohol Rules 1981;

13.8. It also appears to this Court that the shortfall of 2600 ltrs., was upon examination of the books of accounts of M/s.Finar only and whereas it would only be clear after examining the books of accounts of both the parties as to whether there would be any actual shortfall;

13.9. It also appears that the books of accounts and all records have been seized by the Gujarat Prohibition Department;

13.10. This Court is also of the *prima facie* opinion that, in view of the statements of Jayesh referred to herein above, it would be the said accused, who could be stated to be done an act punishable under Section 65A(3) of the Gujarat Prohibition Act;

13.11. This Court has also appreciated that Section 79 of the Gujarat Prohibition Act, which holds the licensee vicariously liable, does not envisage punishment of imprisonment to any

person except the actual offender and whereas any person other than the actual offender could be sentenced with imprisonment only of default of payment of fine;

13.12. This Court has also considered that the applicants before this Court have no criminal antecedents, and whereas the Managing Director is aged about 58 years, one of the independent Director is aged 90 years, the other independent Director is aged around 84 years, the non-Executive Director aged 53 years, and the employee is aged 56 years.

13.13. Considering the fact situation in context of the law laid down by the Hon'ble Apex Court in case of **Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.** reported in **(2011)1 SCC 694**, it appears that while the accusation against the applicants of being involved in the offence, which is a very serious

and grave offence, yet *prima facie* it appears that there is neither any overt act or illegal omission, which could be attributed to the applicants. It also appears that the applicants do not have any antecedents of being involved in any criminal activity or being convicted and imprisoned by a Court in respect of any cognizable offence. It also appears that there is no apprehension raised that the applicants are likely to flee from justice. It also appears that while, as noted herein above, there is no *prima facie* case of any overt act or illegal omission as alleged to have been committed by the applicants and whereas in any case, since the licence to deal with the product in question has been suspended/cancelled, there is no likelihood of any repetition of the offences in question. While it does not appear that the accusations have been made with the object of injuring or humiliating the applicants by arresting them, more particularly since the investigation

has *prima facie* revealed that the tragedy had occurred on account of the deceased and the injured drinking spurious liquor, which contained Methyl Alcohol which had originated from the factory premises of the applicants, yet as noted herein above, in view of the *prima facie* findings of there being no overtact or illegal omission attributed to the present applicants, this Court would be inclined to hold in favour of the applicants. Furthermore, insofar as the anticipatory bail affecting cases of large magnitude or affecting large number of people, while it appears to this Court that the magnitude of offence is huge, but at the same time, it also appears, more particularly as noted herein above, *prima facie* from the statement of accused Jayesh that the applicants may not have been complicit and thus, in the considered opinion of this Court, anticipatory bail to the applicants would not have any adverse consequence. Furthermore, insofar

as the balance which is required to be struck between the two factors, in the considered opinion of this Court, considering the *prima facie* observation of this Court that the applicants may not be stated to have done any overtact or illegal omission, therefore, while no prejudice could be caused to the free, fair and full investigation, but at the same time, arrest of the applicants would result in harassment, humiliation and unjustified detention of the accused and, therefore, the balance would tilt in favour of the applicants herein. Furthermore, there is no apprehension raised by the Investigating Officer that the applicants could either tamper the witnesses and whereas since the complainants are Police Officers i.e. the State itself, therefore, there could not be any apprehension that they could be threatened. Again, considering the magnitude of the offences and the fact that the chemical which caused large number of deaths and even large

number of injured victims had originated from the factory of the applicants and, therefore, it could not be said that the prosecution was frivolous, yet considering the aspect of no specific overt act being made out against the present applicants or even any specific illegal omission also not being made out and further in view of the statement of Jayesh since it appears that the transaction of selling Methyl Alcohol had been undertaken by Jayesh individually and independently and also considering the fact that such transaction of sale of Methyl Alcohol does not appear to be a regular feature, therefore, in the considered opinion of this Court, discretion can be exercised in favour of the applicants.

14. Having regard to the circumstances noted above, and considering the law laid down by the Hon'ble Apex Court, this Court is inclined to consider this application.

15. This Court has also appreciated the gesture on part of the applicants of providing an amount of Rs.2.20 crore to be paid as compensation to the victims of the unfortunate tragedy and whereas it is clarified that the same is not an aspect which has weighed with this Court while considering this application.

- a) Insofar as the amount of compensation is concerned, the same shall be deposited by the applicants as per their undertaking within a period of four weeks from the date of receipt of this order with the Gujarat State Legal Services Authority. Furthermore, since the FIRs have been registered within the jurisdiction of two different Districts i.e. District Botad and District Ahmedabad, the Secretary, District Legal Services Authority, Botad District and the Secretary, District Legal Services Authority, District Ahmedabad (Rural), shall coordinate with the Investigating Officers and the Public

Prosecutors and prepare a list of legal heirs of the victims of the tragedy in question and a list of persons injured. Based upon such lists prepared, the Secretaries of the concerned Districts shall seek for disbursement in the ratio of Rs.3,00,000/- (Rupees three lac only) per deceased victim and Rs.1,00,000/- (Rupees one lac only) for the injured victim and whereas the Gujarat State Legal Services Authority shall appropriately disburse the amount in favour of the Secretaries of the concerned District Legal Services Authorities, who shall then appropriately disburse the amounts to the legal heirs of the deceased victims and the injured, after due verification of their identities.

- b) It is required to be observed here that as per the information supplied to this Court, 46 persons have expired and 82 persons have received injuries, therefore, the total amount of Rs.2.20 crore would be distributed in the

manner as : 46 (deceased) x Rs.3,00,000/- = Rs.1,38,00,000/- + 82 (injured) x Rs.1,00,000/- = 82,00,000/- = Rs.2,20,00,000/-. It is directed that the Secretaries of the concerned District Legal Services Authorities shall prepare the report insofar as the deceased and the injured persons within a period of four weeks from the date of receipt of this order and whereas the same shall be forwarded as directed herein above to the Secretary, Gujarat State Legal Services Authority, Gujarat High Court, Ahmedabad and upon receipt of such report, the Secretary, Gujarat State Legal Services Authority, Gujarat High Court, Ahmedabad shall forthwith distribute the said amount in favour of the Secretaries of the District Legal Services Authority concerned. Further disbursal to the legal heirs of the deceased victim and the injured victim shall be done within a period of two weeks thereafter. The

Secretaries of the concerned Districts are at liberty to take assistance of the learned APP of the concerned Districts and/or the Investigating Officer to prepare the reports. In case any clarification is required, it would be open for the concerned Secretaries or the Secretary, Gujarat State Legal Services Authority, Gujarat High Court, Ahmedabad to approach this Court. Furthermore, in case the number of deceased or injured exceeds the number intimated by the Investigating Officer to this Court, then also it would be open for the Secretaries to inform this Court and whereas this Court hopes that appropriate addition to the amount of Rs.2.20 crore shall be made by the applicants herein. The Secretary, Gujarat State Legal Services Authority shall supervise the entire exercise and an appropriate report would be tendered to this Court after the entire exercise of disbursement is over.

16. This Court seeks to refer to an observation made by a learned Single Judge of this Court (Coram: J. B. Pardiwala, J - as he then was) at paragraph 49 in case of **Girishbhai Maganlal Pandya** (supra), which reads as thus:-

"49. Dictating this judgment was a very painful experience. The very thought of a four year old child getting crushed beneath the tyres of his own school bus makes my heart bleed with pain and agony. I can also imagine the pain and agony the parents of the deceased must be undergoing even as on today. However, such thoughts should not allow the mind of a judge to get boggled, otherwise justice cannot be done. However, harsh one may find the law, but at the same time, the law remains the law and it has got to be respected."

This Court is also anguished and pained at the thought of 46 persons losing their lives rendering their families destitute and 82 persons injured, on account of a completely avoidable tragedy. This Court would sympathize with the families of the unfortunate deceased and also with the injured and their families. However, as observed by the Court in the above quoted paragraph, this Court has not

allowed such thoughts to distract or boggle down its mind while passing this order.

17. In the result, the present applications are allowed by directing that in the event of applicants herein being arrested pursuant to FIRs: (1) **FIR No.11192018220218/2022 registered with Dhandhuka Police Station, District Ahmedabad (Rural);** (2) **FIR No.11190001220293/2022 registered with Barwada Police Station, District Botad;** and (3) **FIR No.11190006220446/2022 Ranpur Police Station, District Botad,** the applicants shall be released on anticipatory bail on furnishing a personal bond of Rs.1,00,000/- (Rupees One lac only) each with one surety of like amount each, on the following conditions that the applicants:

(a) shall cooperate with the investigation and make themselves available for interrogation whenever required;

(b) shall remain present at the concerned Police Station on **23.09.2022** between 11:00 a.m. and 2:00

p.m.;

(c) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(d) shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the Police;

(e) shall not leave India without the permission of the Court and, if having passport shall surrender the same before the Trial Court within a week;

(f) shall at the time of execution of bond, furnish the permanent residential address to the Investigating Officer and the Court concerned and shall not change their residence till the final disposal of the case or till further orders;

(g) shall mark their presence once in a month (on 1st Monday) for a period of next six months at the concerned Police Station;

18. Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicants to the competent Magistrate, if he thinks it just and proper and

learned Magistrate would decide it on merits. The applicants shall remain present before the learned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the learned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police remand. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if ultimately granted, and the power of the learned Magistrate to consider such a request in accordance with law. It is clarified that the applicants, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

19. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the applicant on bail. Rule is made absolute to the aforesaid extent. Direct service is permitted.

V.V.P. PODUVAL

(NIKHIL S. KARIEL,J)