

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 10966 of 2019

AMARNATH JINKURAM VASAVA

Versus

STATE OF GUJARAT

Appearance:

MR IH SYED, SR. ADVOCATE WITH MR RAHUL SHARMA(8276) for the Applicant(s) No. 1,2,3,4

for the Respondent(s) No. 2,3

MR MITESH AMIN, PP WITH MR PRANAV TRIVEDI, APP (2) for the Respondent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE S.H.VORA

Date : 15/01/2020

ORAL ORDER

1. By way of present application under Article 226 / 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure, the petitioners have made following prayer in terms of para – 7(B) :-

“7(B) Issue a writ of mandamus or any other writ, order or direction to quash and set aside the impugned FIR registered vide Cr.No.I-74/2019 of Chhapi Police Station, District Banaskantha u/s. 143, 147, 149, 308, 152, 153, 120B, 336, 353, 427, 506(2), 341 and 395 of IPC and u/s. 3 of the Prevention of Damage to Public Properties Act, 1984.”

2. Brief facts of the case for disposal of the present application can be stated thus :-

2.1 It is the case of the petitioners that 19.12.2019 was death anniversary of freedom fighters, Ashafaquallah Khan and Ram Prasad Bismil, for which commemoration meeting had

been organized. In addition to said meeting, a protest meeting had been scheduled against the Citizenship Amendment Act, 2019. For the said dual purpose, petitioner no.1 and 2 made joint application dated 17.12.2019 to the Mamlatdar, Vadgam seeking permission for organizing meeting in Chhapi Town of Vadgam Taluka, District Banaskantha. Accordingly, permission was granted to hold meeting on 19.12.2019 from 10.00 am to 17.00 pm. Subsequently, PSI, Chappi wrote letter dated 18.12.2019 to the Mamlatdar and Executive Magistrate, Vadgam requesting to cancel the permission, which subsequently, came to be cancelled as per order dated 18.12.2019 passed by Mamlatdar and Executive Magistrate, Vadgam.

2.2 It is the case of the petitioner no.1 that police had come with order of cancellation of permission, but as it was very late, the petitioner did not receive the cancellation order. According to petitioners, the petitioner no.1 and 4 who were staying at Taj Hotel in Chhapi Town, were detained early in the morning at around 8.45 am and other petitioners were picked up from their respective homes and detained. At about 10.00 am, people started gathering for the said meeting and as they came to know that permission for the meeting had been cancelled, they became restive. It is specific case of the petitioners that they had no knowledge of the subsequent events that took place. Later in the evening, the petitioners came to know that an offence had been registered against them in Chhapi Police Station.

3. Learned senior advocate Mr.I.H.Syed for the petitioners would submit that cancellation of permission to hold protest

meeting was illegal. Not only that the petitioners were detained in the morning around 8.45 am, whereas, alleged incident took place at about 10.00 am, while FIR has been registered at 20.30 hrs. and there is no explanation of delay for registration of FIR. It is submitted at bar that whole of the incident happened only because of last minute cancellation of permission granted earlier and thus, registration of FIR against the petitioners is afterthought and same has been registered when the petitioners were under detention and they were not present at the scene of offence, at the relevant time, as shown in the FIR.

4. Having regard to facts of the case, and submissions made at bar, the Court is primarily concerned with quashment of FIR registered on 19.12.2019 which is at very initial and crucial stage of investigation. The submission of learned senior advocate Mr. Syed to the effect that the petitioners were detained at 8.45 am, therefore, their presence at scene of offence at around 10.00 am is unbelievable and therefore, they are falsely involved in the afore-mentioned offence. Though the submission is attractive, but same is without any substance for the simple reason that due to insistence of mob gathered at the meeting place, the petitioners were released and brought at the scene of offence, since the mob already started damaging and throwing stones on passenger bus. Such facts reflects in the FIR itself. At that stage / time, the petitioner no.2 and 4 addressed gathering and uttered slogans despite the fact that permission was cancelled and it was well within the knowledge of the petitioner no.1. So far as detail occurrence of incident and damage caused to the public property and obstruction created to the law enforcement

agency is apparent in the FIR itself. Since the investigation of impugned FIR is at very initial stage and as stated by learned PP Mr.Mitesh Amin that photographs and videography of scene of offence is under analyse before FSL, but it is a matter of fact that it is specific case of the State that the petitioners were brought at the scene of offence at the instance of the mob on account of earlier permission which was granted and later on cancelled. So at this stage, the Court is not inclined to scrutinize minute details of occurrence right from detention to release of the petitioners and subsequent events which took place on 19.12.2019. Thus, investigation of serious offence is underway. At this stage, the petitioners have not made out a case under section 482 of the Code of Criminal Procedure to quash the FIR, since the petitioners are prima facie found to be involved in the offence and they were very much present at the time of occurrence of scene of offence alleged in the FIR. The present petition being devoid of merits is hereby rejected at admission stage.

SATISH

(S.H.VORA, J)

THE HIGH COURT
OF GUJARAT

WEB COPY