

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 9000 of 2020

With

R/CRIMINAL MISC.APPLICATION NO. 9001 of 2020

With

R/CRIMINAL MISC.APPLICATION NO. 9002 of 2020

With

R/CRIMINAL MISC.APPLICATION NO. 9003 of 2020

With

R/CRIMINAL MISC.APPLICATION NO. 9005 of 2020

With

R/CRIMINAL MISC.APPLICATION NO. 9006 of 2020

With

R/CRIMINAL MISC.APPLICATION NO. 9007 of 2020

With

R/CRIMINAL MISC.APPLICATION NO. 9009 of 2020

With

R/CRIMINAL MISC.APPLICATION NO. 9010 of 2020

With

R/CRIMINAL MISC.APPLICATION NO. 9012 of 2020

With

R/CRIMINAL MISC.APPLICATION NO. 9013 of 2020

With

R/CRIMINAL MISC.APPLICATION NO. 9014 of 2020

With

R/CRIMINAL MISC.APPLICATION NO. 9015 of 2020

With

R/CRIMINAL MISC.APPLICATION NO. 9016 of 2020

With

R/CRIMINAL MISC.APPLICATION NO. 9017 of 2020

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CHOTESINH RAMSWARUP AHIVAR

Versus

STATE OF GUJARAT

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Appearance:

MR AJ YAGNIK(1372) for the Applicant(s) No. 1

MR PRATIKKUMAR B RUPALA(10230) for the Applicant(s) No. 1

MR PRANAV TRIVEDI, ADDL. PUBLIC PROSECUTOR(2) for the
Respondent(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE GITA GOPI

Date : 07/07/2020

COMMON ORAL ORDER

1. All these applications arise out of the same first information report and involve identical questions on facts and hence, they are disposed of by this common order.

2. RULE. Mr. Pranav Trivedi, learned Additional Public Prosecutor, waives service of notice of rule on behalf of the respondent State.

3. The applicants herein, who are the original accused in the first information report being FIR No.11213091200637 of 2020 registered with Shapar Veraval Police Station, Rajkot (Rural) for offences punishable under sections 143, 147, 148, 149, 325, 332, 337, 338, 307, 395, 427, 431, 188 and 269 of IPC, section 144 of the Code of Criminal Procedure, section 43 of the Gujarat Police Act, section 51 of the Disaster Management Act, 2005, section 3(e) and 7 of the Prevention of Destruction to Public Property Act, 1984, have preferred these applications under sections 439 of the Code of Criminal Procedure seeking regular bail.

4. Mr. A.J. Yagnik, learned advocate appearing on behalf of the applicants-original accused in all these matters, submitted that original accused no.1 and 24 in the impugned complaint had preferred regular bail applications before this Court and they were disposed of by the coordinate Bench, as having been withdrawn. It was submitted that withdrawal of the bail applications by the co-accused does not set as precedent in other matters as per criminal jurisprudence since the role of

each of the accused has to be appreciated independently.

4.1 Emphasis was laid on the averments made in the impugned complaint to point out that the main offences are the ones punishable under sections 395 and 307 IPC and according to the allegations made in the impugned complaint, a camera belonging to a Journalist of a Gujarati news channel (ABP Asmita) had been looted; however, the said camera was received by the news channel on the very same day. It was submitted that the said fact proves that the offence under section 395 of IPC ought not to have been invoked in the present case.

4.2 Referring to the injuries sustained by the police personnel who were on duty at the place of incident, learned advocate Mr. Yagnik submitted that the police personnel on duty had sustained minor injuries and none of them had remained admitted as indoor patient for more than two hours. Therefore, no intention could be cast on the applicants of causing any grievous injury to the police personnel who were on duty at the relevant time. It was further submitted that the applicants had no knowledge as to who were the police personnel who were on duty on the spot and thus, no intention could be attributed on the applicants so as to attract the provisions of section 307 IPC.

4.3 Learned advocate Mr. Yagnik further submitted that Shapar Veraval Police Station is near to the place where the migrant labourers had gathered for the purpose of registering themselves for returning to their respective home States through special trains. It was submitted that the authorities concerned were very much aware of the fact that around 150-200 labourers would turn up for the registration process. Hence, they ought to

have made necessary arrangements for the modalities and for their journey from Shapar to Rajkot, which is approximately 42 kms. However, on account of lack of basic facilities, few of the migrant labourers got enraged, which led to the pelting of stones and the blocking of the highway and the police personnel had to call for assistance. It was submitted that the police personnel had sustained minor injuries, but no intention could be gathered of murdering any of the police personnel. It was further submitted that all the migrant labourers, who had gathered there with luggage had only insisted to make arrangements for their travel to their native States and as no necessary arrangements were in place, they got enraged, which led to the commotion. The allegation is of causing injuries with branches of trees and stones. Therefore, at the most, the offence would fall under section 323 IPC. It was contended that merely because the police sustained minor injuries, section 307 IPC cannot be made applicable in the matter so as to prolong incarceration of the accused in jail.

4.4 Learned advocate Mr. Yagnik referred to the order passed by the Government of Gujarat in the General Administration Department dated 29.04.2020 as also the order passed by the Supreme Court in Suo Motu Writ Petition (Civil) No.6 of 2020, to submit that it was the duty of the functionaries to provide for all possible help to the migrant labourers and to provide smooth and orderly movement of these labourers to their respective States.

5. Mr. Pranav Trivedi, learned Additional Public Prosecutor, submitted that the incident which took place at Ahmedabad was totally different to the one in question inasmuch as around four

cars of private individuals had been vandalized. A media person was also injured on the head. The police party was threatened. The anger and anguish led to a situation where few of the migrant labourers instigated others to kill the police persons who were present at the place. It was further submitted that a video of the incident has been recorded. The photographs of the incident show that the labourers were armed with bricks and stones and thus, it was vehemently contended that no bail may be granted to the applicants. Learned Additional Public Prosecutor also placed reliance upon the affidavits of the police witnesses. It was, accordingly, urged that no discretion may be exercised in favour of the applicants.

6. Replying to the submissions raised by the learned Additional Public Prosecutor, it was submitted that none of the applicants herein could be figured out in those videos or photographs. It was submitted that there cannot be denial to the fact that few of the migrant labourers had spoken ill about Gujarat Police; however, the fact remains that there is no involvement of the applicants in any such instigation.

7. Heard learned advocates on both the sides and perused the documents on record. The incident in question took place on 17.05.2020, during which time, the nation-wide lock-down was under place. There was restriction on the movement of people in the State and the local police was asked to follow the Notification of the District Magistrate, Rajkot dated 03.05.2020. The entire area of Rajkot (Rural) was regulated under section 144 of Cr.P.C. and section 43 of the Gujarat Police Act. It is to be noted that the migrant labourers wanted to return to their native States and as per the facts on record, the workers of the industrial units at

Shapar (Veraval Industrial Area) wanted to return to their respective States. Arrangements were made for the labourers to travel through special trains (Shramik trains). On 17.05.2020 the registration of the migrant labourers was under progress and therefore, the workers of Shapar (Veraval Industrial Area) had gathered at the Field Marshall School ground situated on the Rajkot Highway. In the impugned complaint, it has been averred that arrangements had been made for the migrant labourers to reach Rajkot Railway Station. Over and above the labourers who had got themselves registered for travelling in the special trains, few other people had also gathered at the place for getting their names registered and it were these people who had created the ruckus. It was submitted that police personnel, named, Ashwinbhai Makwana and his driver – Renilbhai, had gone to the place with the police van. Both the police personnel had attempted to pacify the labourers. According to the impugned complaint, the accused persons had blocked the road with stones and as it was found that further enforcement was needed for controlling the situation, they informed their superiors, including the Superintendent of Police, Rajkot. The labourers gathered and there was great uproar. They insisted for making arrangements for their return to their native States. It is alleged that the uproar was for making arrangements for their return and they stated that they would not leave the place unless the arrangements were made. It is alleged that few people amongst the crowd began to misbehave with the police. The police tried to pacify them but all efforts went in vain. It is alleged that Narbad Dharmpal Valand, original accused no.25 and others had attempted to instigate the crowd and misbehaved with the police. The police asked them to go away from the place but original accused no.25 and others threatened to kill the police persons

on duty and there was stone pelting and thrashing with branches of the trees. The stones were pelted with the intention to kill the police. The police officers and other staff sustained minor injuries. Even the vehicles of the general public were ransacked. The police attempted to disperse the crowd but during this event, some of the police personnel sustained minor injuries. A police official, named Vishwajit Chudasama, had sustained injury on the face near the ear with a stick. Police official - Ashwinbhai Makwana had sustained injury near the right eye, knee and on the right hand finger. It is also contended that one of the police official from LCB, named Noorsinh Jadeja, had sustained injuries in his right hand, on the right side of the body as also on the back. It is stated that a crowd had also tried to snatch away the camera belonging to a Journalist of a Gujarati news channel, who was shooting the events.

8. It appears from the impugned complaint that 25 persons were named as accused in the impugned complaint and it has been averred that about 150-200 people had gathered at the place for returning to their native States. Sections 395 and 307 of IPC have been included in the impugned complaint over and above the offences under other sections / Acts. The major injury, as per the impugned complaint, has been sustained by one Noorsinh Jadeja, LCB Police Station but other police personnel had sustained minor injuries. However, the said injuries did not require any hospitalization.

9. It is an admitted fact that the crowd that had gathered at the place consisted of migrant labourers, who wanted to return to their native States. The impugned complaint was filed on 17.05.2020. The Government of Gujarat, vide order dated

29.04.2020, has resolved that the Government of India has issued guidelines on 29.04.2020 allowing movement of persons across State borders, which makes it necessary to have coordination with respective State / UT Governments to ensure smooth and orderly movement of persons between Gujarat and other States / UTs. Nodal Officers were appointed for such purpose. Thus, through the said order / resolution, the Government of Gujarat has issued directions for providing necessary support in movement facilitation under guidance of these nodal officers. The local authorities were very much aware about the arrival of hundreds of migrant labourers at the Field Marshall Ground and therefore, the police was required to work in coordination with other authorities. However, it appears that there was utter lack of coordination between the police and the Nodal Officers, who were selected by the Government, vide order / resolution dated 29.04.2020, which led to the chaotic situation.

10. The Apex Court in Suo Motu Writ Petition (Civil) No.6 of 2020 disposed of on 08.07.2020 in paragraph-8 of the order has observed thus:

“8. All concerned States / UTs to consider withdrawal of prosecution / complaints under section 51 of Disaster Management Act and other related offences lodged against the migrant labourers who alleged to have violated measures of lock-down by moving on roads during the period of lock-down enforced under Disaster Management Act, 2005.”

The Apex Court has also directed to establish Counselling

Centres / Help Desks for providing necessary information regarding schemes of the Government and to provide helping hand to the labourers who wanted to return to their native places.

11. Taking into consideration the allegations made in the impugned complaint, which reveals that sentiments of the migrant labourers were at an all time high on account of the prevailing situation and they wished to return to their native States as early as possible coupled with the fact that the police had failed to manage / control the situation appropriately, this Court is of the view that the entire incident could have been averted if there would have been proper coordination between the police and the Nodal Officers appointed by the State Government.

12. The Apex Court, in the above-referred judgment, has asked all States / UTs to consider withdrawal of complaints / prosecution under the Disaster Management Act and other related offences lodged against the migrant labourers, who are alleged to have violated measures of lock-down by moving on roads during the period of lock-down enforced under the Disaster Management Act, 2005. The police was required to handle the crowd tactfully. The roads were blocked by few of the labourers and some police personnel were injured in the incident. The allegation against original accused no.25 and others is of instigating the crowd. Taking into consideration the fact that there would not have been any intention on the part of the migrant labourers to even attempt to murder, the police personnel and considering the injuries sustained by the police personnel which were not life threatening, the discretion is

exercised to enlarge them on bail.

13. Hence, the present application is allowed. The applicants herein are ordered to be released on regular bail in connection with FIR being No.11213091200637 of 2020 registered with Shapar Veraval Police Station, Rajkot (Rural) on executing personal bond of Rs.1,000/- (Rupees One Thousand only) by each of the applicants and subject to the conditions that they shall;

- [a] not take undue advantage of their liberty or misuse liberty;
- [b] not act in a manner injurious to the interest of the prosecution;
- [c] furnish the present address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of the concerned trial court;

14. The authorities shall adhere to its own Circular relating to COVID-19 and, thereafter, will release the applicants only if they are not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the lower Court having jurisdiction to try the case.

15. Rule is made absolute to the aforesaid extent.

16. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email

forthwith.

F.S. KAZI

(GITA GOPI, J)

