

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No 4072 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

AMRUTBHAI BHOLIDASBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR ND NANAVATI SR ADVOCATE WITH MR HARIN P RAVAL
for Petitioner
MR KJ SHETHNA SPL PP for Respondent No. 1
MR JB PARDIWALA for original Complainant.

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 29/09/2000

C.A.V JUDGEMENT

1. The petitioner who is in judicial custody with reference to C.R.I-38 of 2000 registered with Sarkhej Police Station for the offences punishable under Section

302 read with Sections 34 and 201 of the Indian Penal Code as well as Section 25 (1) (c) of the Arms Act has filed this petition under Section 439 (1) read with Section 437 of the Code of Criminal Procedure, 1973 ('the Code' for short hereinafter) and prayed to enlarge him on bail on such terms and conditions as may be deemed just, fit and reasonable by this court. In the alternative, the petitioner has prayed to release him on temporary bail to enable him to take medical treatment for his heart ailment and other ailments including cancer of prostate.

2. From the averments made in the petition it become obvious that C.R.I-38 of 2000 is registered with Sarkhej Police Station pursuant to the FIR lodged by Smt. Artiben, widow of Arvindbhai Patel and daughter-in-law of the present petitioner. In the FIR it is stated that the deceased who was carrying on business as a builder was having land known as Shantivan Farmhouse situated in the sim of village Makarba. As he had 1/3rd share therein, on the day of incident i.e., February 20, 2000, the petitioner, with a view to usurp the share of deceased, quarrelled with him and murdered him by firing shot from his revolver. According to the complainant, over and above the petitioner, Virendrabhai Patel - who is the brother of the deceased and Dharmendrabhai Patel - who is brother-in-law of the deceased, had also picked up quarrel with the deceased regarding construction of wall and instigated the petitioner to commit murder of the deceased.

3. The petitioner has claimed that he had developed chest pain and uneasiness on the day of the incident and had taken treatment at Karnavati Hospital, Ahmedabad for some days from February 20, 2000. The petitioner has traced his medical history in great detail and claimed that he is suffering from acute coronary insufficiency. In support of the claim that he should be enlarged on regular or temporary bail for his heart ailment and other ailments the petitioner has produced certificates issued by Karnavati Hospitals Private Limited, Cardiovascular Division, Bridge Candy Hospital and Research Centre, Mumbai, U.N. Mehta Institute of Cardiology and Research Centre, Ahmedabad, Gujarat Research and Medical Institute (Rajasthan Hospital), Ahmedabad, etc.

4. The petitioner claims that he has been advised to undergo P.T.C.A. (angioplasty) as early as possible to avoid further serious complications and he is ready to abide by all the conditions which may be imposed by this Court if he is released on bail. Thus the petitioner has

filed this petition and prayed to grant reliefs mentioned above.

5. Mr. M.M. Thakor, Police Sub Inspector, Sarkhej Police Station has opposed the prayer for bail by filing affidavit dated July 27, 2000 stating inter alia that looking to the high status of the petitioner and his ability to influence witnesses he should not be released even on temporary bail. The police officer has referred to investigating papers and mentioned in his affidavit that as the petitioner has tried to tamper with the weapon used in the commission of offence after the incident, the petition should be rejected. According to this Police Officer, the petitioner has tried to destroy the evidence appearing against him even at the starting of the investigation itself and in view of his high status and ability to destroy the evidence the petitioner should not be enlarged on bail.

6. The original complainant, Smt. Arti, widow of deceased Arvindbhai Patel, has filed lengthy affidavit dated July 27, 2000 opposing the prayer made by the petitioner for bail. In her affidavit she has narrated in detail the enmity between the deceased and all the accused and stated that the petitioner is not suffering from any ailment as stated in the petition but to get release on bail the petitioner has falsely claimed that he is suffering from certain ailments. She has apprehended danger to her life as well as danger to the life of her two minor children. After referring to the observations made by this Court (Coram: R.P. Dholakia, J.) in Criminal Misc. Application Nos.2607 of 2000 and 2727 of 2000 decided on June 23, 2000, she has stated that the petitioner should not be enlarged on bail.

7. Dr. N.M. Patel, Medical Officer, Central Prison Hospital, Sabarmati, Ahmedabad has filed affidavit dated July 27, 2000 regarding the treatment taken by the petitioner at U.N. Mehta Institute of Cardiology and Research Centre.

8. Smt. Shantaben Amrutbhai Patel, wife of the petitioner, has filed affidavit dated September 12, 2000 stating that her husband is also suffering from cancer of prostate and he should be enlarged on bail. With her affidavit she has produced medical papers of U.N. Mehta Institute of Cardiology and Research Centre, Ahmedabad, Civil Hospital, Ahmedabad, Gujarat Cancer Research Institute (M.P. Shah Cancer Hospital), Pathological Laboratory Reports, Jaslok Hospital and Research Centre, Mumbai, Dr. V.C. Chauhan, etc., in support of the claim

made in her affidavit.

9. She has also filed another affidavit on September 22, 2000 stating that on September 15, 2000 the petitioner was examined by Dr. Sanjay Shah who has advised the petitioner to undergo angioplasty and surgery of heart first and thereafter to go for surgery of prostate. With this affidavit she has produced certificate issued by Dr. V.C. Chauhan of Jaslok Hospital, M.P. Shah Cancer Hospital, Dr.R.C. Patel of Krishna Heart Institute, etc.

10. Mr. P.R. Bhatt, Police Inspector, Sarkhej Police Station has also opposed the prayer for bail by filing affidavit dated September 25, 2000 stating inter alia that from the opinion of the ballistic expert produced in the police papers with which the charge sheet is submitted, there is evidence to show that the accused No.1/ petitioner has tampered with the fire arm from which he is alleged to have fired a shot and killed his son Arvindbhai and the said revolver alleged to have been used by accused No.1/petitioner in committing the offence was seized by the police on February 22, 2000 under a Panchnama drawn between 7 P.M. and 7.45 P.M. on its production by Shantaben, the wife of the petitioner. He has also mentioned that Mr. H.T. Modi, Scientific Officer, Forensic Science Laboratory and Assistant Chemical Examiner to the Government of Gujarat has given his report dated March 7, 2000. With regard to the muddamal revolver i.e., 'Article J' it is observed that its firing pin and muzzle were examined under the microscope and the microscopic examination revealed mark of tampering on the firing pin and muzzle. After referring to the observations made by this Court (Coram: R.P. Dholakia, J.) in Criminal Misc. Application Nos. 2607 of 2000 and 2727 of 2000 decided on June 23, 2000, he has stated that the petitioner should not be enlarged on bail. He, after referring to various certificates produced by the petitioner with regard to his ailment, has stated that there are well equipped hospitals in Ahmedabad City itself and some of them are referred to in the memo of the petition for bail itself and report of some of them are annexed with the memo of the petition for bail and in any of these well equipped hospitals the petitioner can be given medical treatment to one's full satisfaction. Lastly he has stated in his affidavit that if an under-trial prisoner requires any treatment for any disease which he suffers or may suffer from, he may be taken to any hospital in Ahmedabad City itself, but in the facts and circumstances of the case, wherever the petitioner may be taken for treatment, in whichever

hospital/clinic he is taken for his treatment and wherever he is kept as an indoor patient, direction may be given by this Court that the Police Guards may be kept to keep watch on him being an under-trial prisoner. The sum and substance of the contents of the affidavit filed by Mr. P.R. Bhatt, Police Inspector is that the petitioner should not be enlarged on bail.

11. I have heard Mr. N.D. Nanavati, learned Senior Advocate for the petitioner, Mr. K.J. Shethna, learned Special PP for the respondent No.1 - State and Mr. J.B. Pardiwala, learned advocate for the original complainant. I have also taken into consideration the documents which are on the record of the case, including the medical reports and certificates relied on by the petitioner as well as decisions cited at the bar by the learned counsel for the parties.

12. In para 2 of the petition the petitioner has stated that the petition for bail is based on medical grounds. The petitioner has prayed for regular as well as temporary bail mainly on medical grounds.

13. The manner in which the gruesome murder of the deceased was committed is described by Smt. Arti, widow of deceased Arvinbhai Patel, which is at Annexure A to the petition.

14. Medical papers produced by the petitioner would indicate that though the petitioner is suffering from certain ailments prior to 2 1/2 years of the incident he had not taken any concrete steps such as angioplasty, etc., for heart ailment. If what is stated in the affidavit is believed to be true and should be believed to be true at this stage it becomes obvious that so-called heart ailment did not deter the petitioner from committing heinous and gruesome murder of his own son over property dispute. The Investigating Officer has pointed out in his affidavit that after the incident the petitioner has tampered with the weapon of offence to destroy evidence against him. Thus, though the petitioner was admitted in Karnavati Hospital for so-called chest pain and uneasiness these ailments were not serious and under the guise of taking treatment the petitioner has tampered with the evidence against him.

15. It is relevant to note that the petitioner had filed Criminal Misc. Application No. 190 of 2000 in the Court of learned Sessions Judge, Ahmedabad Rural, Mirzapur for his release on bail on medical ground and produced medical papers in support of his prayer for

bail. His wife, Shantaben had also filed affidavit in support of the prayer for bail made by him. However, the learned Additional Sessions Judge rejected the said application by detailed judgment dated March 24, 2000 directing the Superintendent of Central Prison, Sabarmati, Ahmedabad to take immediate appropriate steps to see that medical aid is available to the petitioner when necessary. While rejecting the application for bail the learned Additional Sessions Judge has taken into consideration the tampering of evidence by the petitioner and possibility of intimidating the eye witnesses belonging to lower strata of the society.

16. The petitioner had also filed Criminal Misc. Application No. 1673 of 2000 in the High Court for bail on medical ground. But the Court (Coram: R.P. Dholakia, J.) vide order dated April 19, 2000 disposed of the said application as withdrawn reserving liberty to the petitioner to file fresh application for bail after submission of the charge sheet.

17. Application for bail i.e., Criminal Misc. Application No. 1348 of 2000 filed by Virendra Patel is also disposed of by the High Court vide order dated April 19, 2000.

18. Affidavit filed by Mr. M.M. Thakor, PSI, Sarkhej Police Station and affidavit of Smt. Arti, widow of deceased would show that the petitioner is wealthy and has capacity to influence witnesses.

19. The order of the learned Additional Sessions Judge mentioned above shows that while the petitioner was in Karnavati Hospital he had tampered with the weapon of offence. For arriving at the conclusion that the petitioner had tampered with the revolver the learned Judge had placed reliance on the opinion of FSL. The affidavit filed by Mr. P.R. Bhatt, Police Inspector, Sarkhej Police Station would also show that the petitioner had tampered with the weapon of offence.

20. The petitioner is facing a serious charge and if prosecution case is believed then he will have to undergo imprisonment for life which is the minimum punishment prescribed for murder. As observed by our High Court in Kanubhai R. Rabari v. Kalabhai Jaisingbhai, 1986 GLH 210, one of the considerations which should weigh with the Court while granting or refusing bail is to see the availability of the accused at the time of trial. More serious the offence, the more likelihood of the accused to escape and not to stand to trial. This can safely be

inferred because if the offence for which the accused is charged with serious offence is proved, the stake would be very high. He may even be imprisoned for life or may be ordered to be hanged. Therefore, in such case, it will surely be one of the relevant circumstances to take into consideration as to with which offence the accused is charged.

21. Moreover, the apprehension of danger to her life and to the life of her two minor children expressed by the widow of deceased and tampering with the evidence by the petitioner cannot be ignored.

22. It is true that under trial prisoners shall be dealt with sympathy and court's approach should be humane towards them but the sympathy does not mean that by showing misplaced sympathy the Court should bud in need.

23. The whole prosecution case is at the threshold. Though medical certificates would indicate that the petitioner is suffering from health problem the record shows that he has been provided with medical aid by Superintendent of Central Prison, Sabarmati, Ahmedabad as and when necessary. The petitioner has not given concrete data as to when he proposes to undergo angioplasty or bypass surgery. Though the petitioner states that he has been advised angioplasty, the petitioner is not able to state as to when he wants to undergo angioplasty. It may be stated that facility of angioplasty is now available in Ahmedabad at Krishna Heart Institute and Rajasthan Hospital, etc. In case of need the petitioner can always be referred to any of these institutes by the Superintendent of Central Prison, Sabarmati, Ahmedabad, after obtaining necessary certificate from the Civil Hospital or U.N. Mehta Institute of Cardiology and Research Centre. The record of the case does not show that proper medical aid is not available to the petitioner while he is in judicial custody. Affidavit filed by the wife of the petitioner on September 22, 2000 would show that as per the medical advise surgery of prostate is to be performed after the petitioner undergoes angioplasty and surgery for heart ailment. Therefore, grant of bail on the ground of need for surgery of prostate at this stage need not be considered. Moreover, in view of what is stated in para 6 of her affidavit, no doubt, possibility of cancer of prostate is raised but no specific diagnosis about the cancer of prostate is made.

24. The attempt of the petitioner is to get bail for unspecified period on medical ground which cannot be

entertained in view of the serious charges made against him and well-founded possibility of tampering with the evidence.

25. It is relevant to note that before submission of the charge-sheet the petitioner has preferred Criminal Misc. Application No. 1673 of 2000 before this Court for enlarging him on bail on the ground of his ailment. The said petition came up for hearing before this Court (Coram: R.P. Dholakia, J.) who vide order dated April 19, 2000 allowed its withdrawal with a liberty to apply afresh after the charge-sheet is filed either before the Sessions Court or before this Court for getting temporary bail if any extraordinary emergency arises and in that event, the same will be decided on merits. So far as the ailment of the petitioner is concerned, as observed earlier, the medical papers produced by the petitioner would indicate that the petitioner was suffering from certain ailments 2 1/2 years prior to the date of incidence. Therefore, he would have narrated about all these ailments in the previous bail applications i.e., Criminal Misc. Application No. 1673 of 2000 also. However, after arguing the matter at length the petition came to be withdrawn, meaning thereby the ground of ailment was not appealed to the learned Judge of this Court and on the facts and in the circumstances of the case, the learned Judge was not inclined to release the petitioner on bail. From the averments made in the petition and the submissions advanced during the course of hearing and more particularly from any of the medical case papers annexed with the petition I do not find any new ground requiring consideration, even though I have dealt with it at length in earlier paragraphs of this judgment for coming to the conclusion that the ailment of heart can be treated in any of the best available hospitals in Ahmedabad City as per the choice of the petitioner. It should not be lost sight that the petitioner is an under-trial prisoner and his liberty and privilege is temporarily curtailed. He cannot have the right to select a particular doctor or particular hospital from whom or from where he should get treatment. In other words, he does not have as much liberty as a free citizen enjoys to canvass the case that he should be treated by a particular doctor of his choice outside Ahmedabad and more particularly treatment which he requires is available in the City of Ahmedabad itself. Therefore, he cannot be released either on regular or temporary bail for getting treatment outside Ahmedabad on the ground of ailment.

26. Decisions cited at the bar turns on their own

facts. Therefore, I do not proposed to discuss them in detail.

27. In view of what is stated above and in view of the settled legal position, this petition cannot be entertained. However, in order to see that the petitioner gets needed medical aids it would be necessary to direct the Superintendent of Central Prison, Sabarmati, Ahmedabad to take appropriate steps when need arises.

28. For the foregoing reasons, the petition fails and accordingly is rejected. Notice is discharged. The Superintendent of Central Prison, Sabarmati, Ahmedabad is directed to take all steps to make medical aid available to the petitioner in case of necessity.

29.9.2000. (A.M. Kapadia, J.)

(karan)