IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATIONs No 4065 to 4068, 4070 to 4073
4114, 4117, 3225, 3237, 3641, 3642, 3650, 4407 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

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

@

MAYANK VINAYCHANDRA SHAH

Versus

STATE OF GUJARAT

Appearance:

MR Rajendra Singh with Mr SAURIN A SHAH for Petitioners

Mr S N Shelat, Advocate General with Mr A D Oza PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 29/06/2001

C A V (COMMON) JUDGEMENT

This group of petitions filed by different

petitioners for enlargement on bail under section 439 of the Code of Criminal Procedure, 1973 (for short, 'Code'), for different offences said to have been committed by them. As per the say of the prosecution, the petitioners in all these petitions have committed offences punishable under sections 304, 418, 420, 120-B, 114 of IPC, section 48 of the Gujarat Ownership Flats Act, 1973 for the violation of certain provisions made therein. The facts are common and therefore, they may be briefly stated as follows:

2. The petitioners have constructed different buildings. They are all stated to be residential buildings having not more than four storeyed. The flats were allotted and sold to different allottees at relevant point of time. On 26.1.2001, the flats, constructed by these petitioners, collapsed and on account of the collapse of the flats, many persons staying therein sustained grievous hurts and many of them succumbed to the injuries. The case against the petitioners is that the petitioners are guilty of offence as aforesaid. The prosecution has mainly contended that the petitioners are the builders of the aforesaid buildings and charge-sheets have also been filed against them for the aforesaid offence showing that there is prima facie case that the petitioners have committed the aforesaid offence. It is also contended that looking to the gravity of the offences, the petitioners cannot be enlarged on bail. It is further contended that the petitioners were found absconding for some time and, therefore, they are likely to abscond if they are enlarged on bail. It is also contended that this is not a stage at which the petitioners should be enlarged on bail and it may be open to the petitioners to apply for their discharge if they feel that there is no case for framing charge against them as and when the charge is framed against them before the trial court.

3. As against this, the learned Advocates for the petitioners have contended that the flats have collapsed on account of the earthquake which took place on 26.1.2001. It is also their case that the petitioners are the builders and they had entrusted the work of building of flats to the contractor, that the Structural engineer, Civil Engineer and other persons were employed to see that the flats were constructed in order. It is also their contention that there was no defect in the design and there was no defect in the materials used. That therefore, no offence can be said to have committed by them.

4. As against this, the prosecution has alleged that the construction was not up to the standard. It is further alleged that in some cases, the cellar below the ground floor was constructed without any sanction and that was constructed without the use of cement concrete etc. It is further contended that the water tanks at the top of the buildings were installed contrary to the permission granted by the competent authority. That the permission granted was with respect to smaller size of water tanks against which these petitioners have placed water tanks of larger size which would show that the weight at the top had been increased. It is further alleged that some pent-houses were constructed at the top without the sanction of the competent authority and therefore, it also increased the weight at the top. It is further contended that the iron was not used in proper quantity. That the pillars were not constructed in required numbers and the materials used were not up to the standard and consequently, the entire construction was not up to the standard. It is, therefore, the case of the prosecution that the petitioners being the builders knew that on account of the above facts, the construction made was such that would fall or collapse at any point of time and it would result in death of the persons staying in or living around the said flats. That therefore, the petitioners have committed the offence as aforesaid and there is prima facie case against the petitioner. It is also the case of the prosecution that even the Forensic Science Laboratory has given preliminary report showing that iron was not used in proper quantity and the material used was sub-standard which was the cause for the collapse of the said buildings. In any case, the prosecution has alleged that the building collapsed on account of the aforesaid reasons and the petitioners knew that the flats were likely to collapse and the people staying therein were likely to suffer injuries likely to cause their death. It is, therefore, the say of the prosecution that the petitioners are guilty of offence punishable under section 304 of IPC on the aforesaid aspect of the case.

5. The arguments have been advanced at great extent on behalf of both the sides. Mr Rajendra Singh, learned Sr.Counsel appearing with Mr Saurin Shah, learned Advocate argued the matter at length on behalf of the petitioners. The arguments were also advanced by Mr Saurin Shah on behalf of the petitioners in support of the arguments advanced by Mr Singh. On the other hand, Mr S N Shelat, learned Advocate General appearing for the State argued the matter at length on behalf of the State. It is required to be considered here at the outset, as to

whether the offence said to have been committed by the present petitioners can be one punishable under Part I of Section 304 of IPC or whether it can be an offence punishable under Part II of Section 304 of IPC.

6. Learned Advocate General has very fairly stated that no intention can be imputed or attributed to the petitioners and, therefore, only knowledge can be attributed to them and consequently, the offence which can be said to have been committed by the petitioners would be one punishable under section 304 Part II of the IPC and not Part I thereof. Therefore, we have to proceed with the footing that as per the case of the prosecution, the petitioners have committed offence punishable under Part II of Section 304 of IPC. Now it is very clear that so far the offence punishable under section 304 Part II of IPC is concerned, the provision has been made in the IPC which can be read as follows.

Section 304 IPC

"whoever commits culpable homicide nota amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death; or of causing such bodily injury as is likely to cause death".

or with imprisonment of either description for a term which may extend to 10 years, or with fine, or with both, if the act is done with the knowldege that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

It is an admitted position that so far as the first part is concerned, the offence is made punishable with imprisonment for life or imprisonment for a term which may extend to 10 years and fine. Any way, the allegation of intention does not stand and, therefore, we go by 'knowledge' as stated in second Part of section 304 of IPC. As said above, this offence is made punishable with imprisonment which may extend to 10 years or with fine or both.

6. Learned Sr.Counsel Mr Rajendra Singh and Ld. Advocate Mr Saurin Shah appearing for the petitioner have argued the matter at length and they have contended that

there is no question of imputation of knowledge with the petitioners and, therefore, there is no question of applicability of section 304 part I of IPC. In support of this contention, certain decisions have been referred to by the learned Advocates for the petitioners. Mr Saurin Shah also started arguing as to the causes of earthquake and the consequences thereof. I am of the opinion that it is not necessary for this court to enter into this area at this stage for the purpose of deciding these bail applications of the petitioners. I am also of the opinion that it is not very much necessary for this court even to consider as to whether or not the offence punishable under section 304 Part II of IPC exists, prima facie, against the petitioners. Let us assume that the petitioners are involved in an offence punishable under section 304 Part II of IPC. Let us also assume that there is prima facie case that the petitioners have committed the said offence. Let us also take it that there are grounds to proceed against the petitioner for the aforesaid offence. In that view of the matter, this matter would be in a shorter compass. As said above, the offence punishable under Part II of section 304 IPC is one not punishable with imprisonment for life but it is punishable with imprisonment which may extend to 10 years. It is important to note that with respect to this offence, jail sentence is not obligatory, mandatory or compulsory. Law itself makes ita clear that the court can impose jail sentence or fine or both. In other words a discretion has been given to the court as to what punishment should be imposed. The court has been given discretion to impose jail sentence. The court has also been given discretion to impose fine. The court has also been given discretion to impose both jail sentence as well as fine. However, the things are clear that this is an offence which is not punishable with imprisonment for life and it is also clear that it is not an offence wherein it is not compulsory for the court to award jail sentence, on conviction, to the accused persons. This would show the gravity of the offence which is said to have been committed by the present petitioners.

7. Here we may also turn to the provisions made in section 439 of the Code. The provision contained in section 439 of the Code has given special power to the High Court as well to the Sessions Court regarding bail. The said provision can be reproduced for ready reference as under:

"439. Special powers of High Court ora Court of Sessions regarding bail - (1) A High Court ora Court of Sessions may direct -

(a) that any person accused of an offence and in custody be released on bail, and if the offence if of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purpose mentioned in that sub-section,

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified

Provided that the High Court or the court of sessions shall before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Sessions or which, through not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

A bare perusal of section 439 of the Code is very clear which says that Part II of section 304 of IPC will clearly find place in this provision made in section 439 of the Code. The reason is that it falls in a category of sub-section (3) of section 437 of the Code. In other words, the offence falling in sub-section (3) of section 437 of the Code can be considered by the High Court and Sessions Court in appropriate cases and discretion has been given to these two Courts for enlarging the accused persons, falling in section 439 of the Code, on bail. Therefore, this court has wider discretion to enlarge the accused persons on bail, even when such persons are alleged to have committed offence punishable with imprisonment which may extend to 7 years or more. The provision made in sub-section (3) of section 437 of the Code makes it clear that the Court may impose conditions in order to ensure that the accused persons shall attend in accordance with the condition of the bond executed under the Chapter or in order to ensure that such person shall not commit offence similar to the offence of which he is accused or of the commission of which he is suspected. Even other conditions can also be imposed. Therefore, it is a matter of discretion given to this

court for enlargement of the accused person who were said to have committed offence punishable under Part II of section 304 of IPC.

8. Ld. Advocate General has relied upon a decision in the case of State v. Jaspal Singh Gill, reported in AIR 1984 SC 1503. There it has been laid down by the Apex Court that when the accused was charged for an offence under section 3 of the Official Secrets Act relating to military affairs and when it was alleged that the accused had obtained classified information on defence matters and had passed on the information to the U.S. Intelligence Operators and when the High Court enlarged the said accused on bail on the ground that the material collected by the prosecution was insufficient to sustain conviction, then in that event, the observation was that the finding that the material collected by the prosecution and the evidence to be adduced at the trial would not be sufficient to sustain conviction was a premature decision recorded by the High Court. It is further observed that the accused should not have been enlarged on bail in the larger interest of the state. It is further observed that the gravity of the offence on which the accused was charged is quite obvious. That they relate to the security of the State and in such circumstances, the accused should not have been released on bail as per the observations made therein. The Supreme Court also observed that the current situation in the country is such that it may be easily exploited by unscrupulous men to their own or to some foreign power's advantage. In that view of the matter, the grant of bail by the High Court was not found favour by the Supreme Court.

9. Here the facts are different. It is not a matter involving the defence problem. This is no question of involvement of security of the state. Therefore, on facts, the allegations made in the case before us are quite different from those made in the case reported in AIR 1984 SC 1503 (supra). Therefore, it is not possible to compare the facts of that case with the facts of the case before us. This decision would, therefore, not apply here.

10. Learned Advocate General has also cited a decision of the Supreme Court in the case of State of Maharashtra v. Anand C Dighe, reported in AIR 1990 SC 625. In para 7 of the said decision, the observations are as follows:

"There are no hard and fast rules regarding grant

> or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court. Where the offence is of serious nature the Court has to decide the question of grant of bail in the light of such considerations as the nature and seriousness of offence, character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of presence of the accused not being secured at the trial and the reasonable apprehension of witness being tampered with, the larger interest of the public or such other similar considerations."

11. It is to be seen that the offence involved in the said case was one punishable under section 302 of IPC also along with offence punishable under section 31 of TADA Act, 1987. It is very well known that offence punishable under section 302 of IPC is of a very serious nature which is punishable with death or imprisonment for life. It is to be seen that even the court has no discretion or jurisdiction to award punishment less than the imprisonment for life. That shows the gravity of that offence which cannot be put on par with the offences punishable under Part II of Section 304 of IPC when even the jail sentence is not compulsory.

12. Learned Advocate General also relied upon another decision in the case of State of Maharashtra v. Ritesh, reported in 2001 Cr.L.J. 1695. Para 2 of the said judgment would disclose that the offence involved in the said matter was one punishable under sections 302, 120B, 364, 397 etc. read with section 34 of IPC along with other offence. Even the observation of the Supreme Court is that the accused was charged for various offences including murder and conspiracy. There the High Court on referring to merits of the case, recorded a finding that there was no material on record to show that the accused was guilty of conspiracy in execution of which the deceased, once his beloved, was murdered. The Supreme Court found that the High Court did not afford opportunity to prosecution to lead evidence to establish existence of conspiracy despite observing that the case was based on circumstantial evidence and, therefore, the order granting bail to the accused was set aside by the Supreme Court. Again this is not a case of offence punishable with death or imprisonment for life like one punishable under section 302 of IPC.

13. In the case on hand, at the cost of repetition, it has to be stated that the offence punishable under

section Part II of section 304 of IPC does not require even imposition of jail sentence. Therefore, there is difference of degree in the offences which are involved in the present case and in the offence involved in the aforesaid reported case.

14. It may also be stated here that the learned Advocates for the petitioners as well as the Learned Advocate General, both have referred to the provisions made in the National Building Code in order to support their rival cases. Learned Advocate General has also argued that there is apparent breach of provisions made in the National Building Code as was applicable at the relevant time. Since I have assumed that the petitioners have committed an offence punishable under Part II of section 304 of IPC, it is not necessary to deal with the said arguments of the learned Advocates for the parties with respect to the violation of the provisions made in the National Building Code.

15. Out of this group matters, certain cases were set apart and from the said files, it was indicated by the learned Advocate General that in Criminal Misc.Application No.4066/2001, the affidavit filed on record clearly discloses that 15 persons have died on account of the collapse of flats. That the overhead tank was larger in size than the size approved when the plan was sanctioned. That there were three pent-houses at the top of the flats. That the base was narrower than the upper part of the building. That there was cellar at the bottom which was not a part and parcel of the sanctioned plan. That though in the sanctioned plan approved by the AUDA it was found that only 1.2 metres wide cantilever (balcony) was allowed, the petitioner constructed 5.5 feet balcony by violating the bye-laws, which would increase the burden and size of the building at the top. It is also found from the affidavit filed on behalf of the State that the foundation of the cellar was in soil and not of cement concrete base. Even the depth of foundation was found less than what was required, which can also be found from the affidavit. On the aforesaid basis, an argument was advanced by the learned Advocate General that the building was very heavy at the top and it had weak foundation. That the petitioner knew the said aspect of the case and, therefore, they are guilty of offence punishable under section 304 of IPC. As said above, this aspect has been considered and that is why without going into the merit of the case, it has been assumed that the petitioners have, prima facie, committed offence punishable under offence under Part II of section 304 of IPC. It is again not necessary to go into

detailed discussion of this argument of the learned Advocate General.

16. Learned Advocate General has also relied upon a decision of the Supreme Court in the case of State of Gujarat v. Haidarali Kalubhai, reported in AIR 1976 SC 1012. There the question arose was as to whether offence can be said to have been committed under section 304 A or whether it was an offence punishable under section 304 of IPC. The Supreme Court considered the facts of the said case and then observed that if a person willfully drives a motor vehicle into the midst of a crowd and thereby causes death of some persons, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. As said above, since it is assumed that the petitioners have, prima facie, committed offence under Part II of section 304 of IPC again this decision does not require further discussion.

17. Learned Advocate General has also relied upon a decision in the case of Shamsher Khan v. State (NCT of Delhi), reported in 2001 SCC (Cri) 31. In reply to the reference of this judgment made by the learned Advocate General, it is argued by the learned Advocates for the petitioners that this decision will not hold good in the present case since the facts are different. As stated above, it would not be necessary to discuss even this decision. Reference was also made to a decision of Calcutta High Court in Re:Tushar Kanti Ghosh, reported in Cr.L.J. 1557. There the accused had applied for anticipatory bail under section 438 of the Code. The accused was a District Building Surveyor working with the Municipal Corporation. Partial occupation of a multi storeyed building was permitted on the basis of fitness certificate. The building was not according to the sanctioned plan but some deviations were made and the accused certified that the building was fit in all respects and was according to statute and statutory rules. The court found that the said act was not with an intention of causing death or bodily injury as is likely to cause death. That it could be presumed that the act was done with knowledge that structural deviation of the building could result in collapse of building resulting in death and therefore, the anticipatory bail was refused. Firstly, it is a decision of another High Court and, therefore, admittedly, it does not have a binding effect. Secondly, it is to be considered that it was a matter of anticipatory bail. When anticipatory bail was granted, the accused was required to be released as soon as arrested. Therefore, the custodial interrogation will not be permissible unless police remand is sought and

granted. The principles enunciated in the said matter relates to the grant of anticipatory bail and therefore, it would not be proper to compare the two cases wherein the present case is for regular bail and not for anticipatory bail.

18. It has been strongly argued on behalf of the State by the learned Advocate General that the petitioners were found absconding for about three weeks and, therefore, if they are released on bail, it would not be possible to secure their presence for further interrogation as and when necessary or at the stage when the trial may proceed against them. Now this can be considered as a good ground for rejecting the application. At the same time, the movement of the accused persons can be controlled or restricted by imposing certain conditions. It is a matter of routine experience that when the accused persons are released on bail, certain conditions are being imposed with respect to their movement. some times, they are required to mark their presence before the police station once in a week, once in a fortnight or once in a month. Sometimes, they are required to record their presence before the Court and they are required not to leave a particular place without prior permission of the particular court. They are sometimes, required not to enter a particular place without the permission of the court. So many conditions are being imposed to restrict the movements of the accused persons.

19. In the present case, the buildings collapsed are situated in Ahmedabad City and, therefore, the conditions can be imposed that the accused persons, if released on bail, shall not enter Ahmedabad City and rural districts till at least the investigation is complete totally and charge sheets against all the accused persons are filed. Here it is to be considered that as argued, though charge-sheets have been filed against the present petitioners, investigation has not been totally completed, inasmuch as the investigation against certain accused persons is still pending. Then some accused persons required to be arrested are still absconding. It is also found from the arguments that though the FSL report have been received and filed on record, reports from the Laboratory situated in Hyderabad have not been received in most of the cases. Therefore, the prosecution will have to furnish copies of all relevant materials to the accused persons, before the trial commences. Therefore, with a view to protect the interest of the state, the movement of the petitioners can be curtailed and restricted as aforesaid.

20. The learned Advocates for the petitioners have contended that the petitioners were not actually absconding but they were on a move for trying to get some orders from some courts. They must have been trying for orders for regular bail or for anticipatory bail. It is also submitted by the learned Advocates for the petitioners that the petitioners were required to make provisions for their defence. That anyhow, the petitioners were not absconding. It is also contended by both the learned Advocates for the petitioners that the petitioners have their residence in Ahmedabad City. It is their argument that even some of the petitioners were staying in flats which have been collapsed. It is also their case that the flats have been allotted even to the near relatives and those flats also collapsed and there are certain deaths in the family members of the petitioners also. Learned Advocates for the petitioners have also argued that in certain cases of builders their application for bail have been allowed and they have been granted bail on certain conditions. That on the principle of parity, the petitioners may also be enlarged on bail.

21. As against this, learned A.G. has also argued that in those matters, the petitioners were released on bail by the court on certain conditions and a scheme was formulated under which the builders-petitioners were agreeable to reconstruct the flats and to allot them to the original allottees. It is also submitted by him that even that order may not be treated to be legal. However, the occupants of the flats were compensated. Learned Advocate for the petitioners have argued that the present petitioners are not in a position to reconstruct flats and to allot them to the occupants and, therefore, they are not in a position to join in the said scheme. It is also argued by them that this should not come as an obstacle against them. Any way, the aforesaid matters were disposed of on some agreements between the builders and the occupants or allottees of flats and, therefore, the present petitioners cannot claim that since those petitioners have been released on bail, the present petitioners should also get bail.

22. In AIR 2000 SC 3537 (1), (Ashok Dhingra v. N C T of Delhi),it has been observed that the accused alleged to have cheated a Japanese National in a sum exceeding Rs. 65 lacs. That, prima facie circumstances did not entitle the accused to be released on bail. But bail was granted in view of the fact that the accused was in custody for six months and to continue to detain him

during pre-trial stage may not be in interest of justice and, therefore, conditional bail was granted. In the present case also the petitioners are also in jail since last four months. Moreover, as disclosed during the course of argument, investigation has yet not been over though charge sheets have been filed against the petitioner. Some accused are still absconding. Therefore, on the one hand it would be difficult to find out as to when the charge sheets would be filed against all and as to when those accused would be arrested. Then, it would also be required to be considered that it is uncertain as to when the trial would commence. The trial cannot commence till the charge sheets are filed, till the accused are arrested and investigation is concluded in all cases, unless the case of the present petitioners are bifurcated for the purpose of trial. The delay likely to be caused even on account of the fact that detailed reports of the Laboratory from Hyderabad and other places have not been received except in one case. Therefore, the commencement of trial is likely to be delayed in the present case, against the petitioners.

23. As said above, the petitioners are said to have committed offence punishable under Part II of section 304 of IPC and as said above, this offence is not punishable with imprisonment for life. Their presence can be secured by imposing suitable conditions. Under the circumstances, I am of the opinion that these are not the cases wherein bail should be outright rejected on the ground that the petitioners in the past, absconded for about three weeks and again they are likely to be absconded. There is no allegation in argument that the petitioners are likely to tamper with evidence. It is to be seen that the charge-sheets have already been filed against the present petitioners. Even otherwise, conditions can be imposed to the effect that they should not contact the witnesses for any purpose. Therefore, even having regard to the nature of the offence said to have been committed by the petitioners, the gravity of charge against the petitioners, the nature of evidence which is prima facie found on record at this stage, considering the requirement of securing presence of the accused at the stage of trial and considering the chance of tampering with witnesses or evidence and considering the larger interest of public, I am of the opinion that this court should use its discretion in favour of granting bail to the petitioners. At the same time, conditions should be imposed to see that there is no tampering with witnesses or tampering with evidence. It should also be seen that the presence of the accused persons is secured by imposing appropriate conditions.

24. It is true that the collapse of so many buildings have taken away the lives of so many persons. It may not be possible to find out suitable words in the dictionaries for expressing sympathy for those who lost their beloved. Probably, nothing can compensate the loss.

25. At the same time, it is also required to be considered that the petitioners have pleaded a defence that the collapse of these buildings was on account of the massive earthquake and not on account of the alleged defective structure. These buildings were allegedly constructed few years back and as per the defence, these buildings stood on their foundation despite very heavy rains during the last couple of years. Moreover, the preliminary reports of the F.S.L. are yet to get support from the final reports from Hyderabad Laboratory to show the quality of materials used in the constructions which have collapsed, in order to prima facie show that the materials used were weak and sub-standard.

26. The prosecution would be at liberty to prove at trial, its case of weak construction as a cause for collapse of the buildings. The defence will also have similar opportunity to disprove the said case of the prosecution and to show a reasonable probability of its case in defence stated hereinabove.

27. We are also required to consider a basic principle that pre-trial or pending trial detention of accused persons (petitioner/s in the present cases) as a measure of pre-conviction punishment is not a judicious act and it is not being approved by our Courts in the country.

28. Under the aforesaid facts and circumstances of the case, I am of the opinion that the argument of the learned Advocate General stating that these are not the fit cases for enlargement of the petitioners on bail is not acceptable. I am also of the opinion that his fear about non-availability of tha petitioners at the trial can be overcome by imposing appropriate conditions.

29. In the facts and circumstances of the case, all these applications are allowed. the petitioners involved in respective offences are ordered to be released on bail on furnishing solvent surety and P.R. in a sum of Rs.50,000/- (Rs. Fifty thousand only) each on following conditions:

(a) The petitioners shall not leave Ahmedabad City and Ahmedabad Rural District till completion and conclusion of the entire investigation and till the submission of final charge-sheet against all the accused persons, and till the apprehension and arrest of all the accused persons involved in the respective cases, without the express permission of the learned City Sessions Judge Ahmedabad/concerned court.

(b) The petitioners shall not approach, contact, induce or threaten the witnesses connected with the offence in question.

(c) The petitioners shall file an affidavit before the learned Sessions Judge concerned, at Ahmedabad showing the place of their residence after their release on bail which would contain details about full address and telephone numbers, if any.

(d) The petitioners shall personally remain present on every 1st working day of the month according to British Calendar before the learned City Sessions Judge, Ahmedabad/concerned court between 2 pm and 5 pm and mark their presence there. The learned Sessions Judge shall make appropriate arrangements for obtaining their signatures on his appearance.

(e) The petitioners shall not leave Gujarat State without prior permission of the learned City Sessions Judge, Ahmedabad/concerned court.

(f) The petitioners shall not leave the revenue district of the place of residence stated by them in their affidavit without the permission of the learned City Sessions Judge, Ahmedabad/concerned court.

(g) Petitioners shall deposit their passport, if any, before the concerned police station before their release on bail. In case a petitioner does not hold any passport, then in that case, he shall file an affidavit before the learned City Sessions Judge, Ahmedabad/concerned court disclosing such a fact.

(h) The learned City Sessions Judge, Ahmedabad/concerned Judge, shall write Yadi to

the Passport Office, Ahmedabad with respect to the aforesaid conditions imposed upon the petitioners restricting their movement and that he has not been permitted to visit abroad, for their information and action.

(i) Each petitioner before his release on bail as aforesaid, shall deposit a sum of Rs.50,000/(Rs. Fifty thousand only) before the learned City Sessions Judge, Ahmedabad/concerned court for the due performance of the aforesaid conditions by the petitioner/s concerned. The learned Sessions Judge will be at liberty to place the said amount in FDR in the name of the officer of his Court at the instance of the petitioner.

(j) If any one or more condition are reported to have been breached by the petitioner/s the learned City Sessions Judge, Ahmedabad/concerned court shall be at liberty to issue non-bailable warrant against the petitioner/s.

(k) Bail bonds shall be executed before the learned City Sessions Judge, Ahmedabad/concerned court.

Details of C.R. Nos and concerned police Station etc. are as under:

---

1. Cr.ma 4065/01 C.R.No.I.19/01 Vejalpur police station
2. " 4066/01 " I.55/01 Satellite "
3. " 4067/01 " " I.38/01 Maninagar "
4. " 4068/01 " I.33/01 Maninagar "
5. " 4070/01 " " I.50/01 Vatva "
6. " 4071/01 " " I.20/01 Ghatlodia "
7. " 4072/01 " " I.67/01 Ellisbridge "
8. " 4073/01 " " I.64/01 Ellisbridge "
9. " 4114/01 " I.37/01 Shahibaug "
10. " 4117/01 " I.20/01 Vejalpur "
11. " 3225/01 " I.66/01 Ellisbridge "
12. " 3227/01 " I.73/01 Ellisbridge "
13. "3641/01 " I.44/01 Maninagar "
14. "3642/01 " I.71/01 Ellisbridge "
15. "3650/01 " I.32/01 Maninagar "
16. "4407/01 " I.12/01 Aslali "

Rule is made absolute in each matter. D.S. permitted.

29.6.2001 [D P Buch, J.]

msp

FURTHER ORDER

After pronouncement of the orders in all these matters, learned Public Prosecutor Mr A D Oza, appearing for the State has made a submission that the aforesaid orders releasing the petitioners on bail may be suspended for at least three weeks in order to enable the State to file appropriate proceedings before the higher forum. As against this, learned Advocate for the petitioners have strongly objected to it. Mr Saurin Shah, arguing for the petitioners has argued that the Court has considered the pros and cons on merits and thereafter, the decision has been recorded and the petitioners have been ordered to be enlarged on bail. That therefore, if this court now suspends its order, it would amount to reviewing its order, which is not technically permissible under the law, since the criminal law does not provide for review of the order of the Court. Mr A J Patel, learned Advocate, appearing in a similar matter, has also contended that there is no reason for suspending the order of the Court. It is also his submission that even if there is discretion in the court for suspension of its order, it may not be used in favour of the State. Mr Saurin Shah also argued that once the order is pronounced, it need not be stayed. Mr N S Desai, learned Advocate appearing in a similar matter also argued that the matter has been disposed of on merit and so far as his client is concerned, he is also sick. That he has also prayed for bail on the ground of sickness of the petitioner and, therefore, the order should not be stayed.

As against this, learned Public Prosecutor has relied upon a decision of this Court in the case of State of Gujarat v. Lalji Popat, reported in 1988 (2) GLR 1073. On the basis of the said decision, it has been contended that when a court passes an order for enlargement of the accused persons on bail and if the State desires to file appropriate proceedings before the higher forum, then, the State can make a submission for the suspension of the order and the Court ordering the release of the accused persons on bail should consider the said request of the State for suspending the operation of the order passed. Therefore, there is a

case law coming from this Court that the Court passing order for enlargement of the accused on bail can and should suspend its order in case of necessity Mr A D Oza has also argued on behalf of the State that some builders have yet not been apprehended and they have been found absconding. It has also been argued by him that some pressures are brought on the occupants of the flats for settlement of their dispute with a view to avoid trial, arrest etc. on criminal side against them. It is also contended that other persons have also been absconding since last so many months and in that view of the matter, with a view to avoid any such pressure tactics and with a view to avoid any further complication, the prayer is that the order releasing the petitioners on bail be suspended at least for three weeks so that during the said period, the State can move appropriate forum for appropriat

Having regard to the aforesaid submissions made on behalf of the learned Advocates for the parties and considering the aforesaid case law, I am of the view that though the petitioners are in jail for about 4 months, it would be just and proper to give some time even to the State for taking appropriate steps before appropriate authority. Time is sought for a period of three weeks praying to suspend the order as aforesaid upto 20.7.2001. Accordingly time is granted upto 12.7.2001. Naturally, if no order is received from or passed by the superior forum, the aforesaid order will be operative with effect from 13.7.2001.

29.6.2001 [D P Buch, J.]
msp