

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 7013 of 2020

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SOHEL BABUBHAI TAYARWALA

Versus

STATE OF GUJARAT

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Appearance:

A S TIMBALIA(7372) for the Applicant(s) No. 1

for the Respondent(s) No. 2

MS MAITHILI MEHTA, ADDL. PUBLIC PROSECUTOR(2) for the
Respondent(s) No. 1

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CORAM:HONOURABLE MS JUSTICE SONIA GOKANI

Date : 29/05/2020

ORAL ORDER

1. This is an application for temporary bail in connection with the FIR being I-CR No. 108 of 2019 registered with Gaikwad Haveli Police Station, Ahmedabad City for the offences punishable under Sections 302, 324, 294(kh) and 114 of the Indian Penal Code and Section 135(1) of the Gujarat Police Act.

2. This Court on 22.05.2020 passed the following order:-

“1. On the ground of wife's angioplasty, this application for temporary bail has been moved by the applicant in connection with the First Information Report CR.No.I108 of 2019 registered with Gaikwad Haveli police station for the offences punishable under sections, 302, 324, 294(kh) and 114 of the Indian Penal Code and section 135(1) of the Gujarat Police Act.

2. Today, during the course of hearing, learned advocate Mr. Timbaliya for the applicant has urged that the grand father of the present applicant has passed away. He does not have father, he is not aware of other siblings. Therefore, to mourn the death of grand-father, which was nearly 10 days back, he needs to amend the Page 1 of 2 Downloaded on : Fri May 29 17:35:28 IST 2020 R/CR.MA/7013/2020 ORDER petition and also furnish the certificate.

3. Let the same be done on or before 26.05.2020 and a copy of the application of amendment which is to be sent to the Registry be also given to learned Additional Public Prosecutor, who shall get the same verified from the concerned Investigating Officer. The matter shall be kept after verification on 28.05.2020.”

3. Thereafter, on 28.05.2020 certain directions were issued. The order passed was as follows:-

“1. The report today received from the Police Officer confirms that the grandfather of the applicant had died on 16.05.2020. His 20th day ceremony shall be on 06.06.2020 and thereafter, the post death ceremony will be on 40th day which would be on 25.06.2020.

2. Learned advocate appearing for the applicant submits that his in-laws are at Ramol and 20th day ceremony will be at Ramol and probably thereafter he would visit his graveyard at Sarkhej. His mother is residing at Jamalpur.

3. Considering the pandemic and strict protocol required for even the jail inmates, learned APP shall find out from the authorities that which area would be covered under the containment zone and red zone. The details also be gathered from the mother of the present applicant about the 20th day ceremony and the 40th day ceremony to be conducted.

4. The matter shall be posted tomorrow i.e. on 29.05.2020 for further orders. A copy of this order be given to learned APP for its onward communication. ”

4. Pursuant to the directions issued, today, learned APP has tendered the report of the police inspector who has urged this Court not to allow the temporary bail on the ground that there is a likelihood of his tampering with the evidence. The factum of his grandfather having passed away is not disputed, however, according to learned APP, he has mother and brother and the relatives and his presence is not necessary. It is also urged that Tangarvad, Jamalpur, where the applicant's mother and brother are residing, is already declared as containment zone whereas, his in-laws stay at Ramol where his wife is staying is in non-containment area and likewise at Sarkhej, but, the whole purpose is to meet his

parents and siblings to mourn the death of grand father.

5. This Court has heard learned APP Ms. Mehta and learned advocate Mr. Timbalia at length. It appears that originally the application was for the illness of the wife of the applicant, thereafter since the grandfather passed away on 16.05.2020, the amendment has been made and the applicant has sought temporary bail on that ground.

6. Noticing that he has reason of mourning the death of his grandfather, considering the fact that his mother is presently in the containment area, it is only his in-laws who are in the non-containment area, not only his visit to the mother will not be feasible, there will be a higher risk to both the sides since the applicant is going to go from the jail, the possibility of his being the carrier of COVID-19 virus also cannot be ruled out and no purpose will be served presently as the mother and brother both are residing at Kachhia Street, China Bakery near Jamalpur. Even otherwise the main post death ceremony of mourning the death of a person is done on 40th day as per the Islam.

7. Let the applicant provide the fixed date of 40th day mourning which shall be verified by the officer concerned from his family and on that day from the morning till evening, he shall be permitted to attend to the ceremony. As the calculation of 40th day can be worked out at the end of family,

he shall reveal the date within one week. Once done, on verification being completed of such date at the end of the Investigating Officer, he shall be permitted to attend the ceremony on such day on his furnishing the personal bond of Rs. 25,000/- (Rupees Twenty Five Thousand Only) with two sureties of the like amount with further direction that except the place of mourning of 40 the day and his mother's residence, he shall not visit anywhere. If the area of residence of mother continues to be in containment zone, he shall not enter the same but shall meet the family outside such zone. In no case, guidelines issued by the authority for Pandemic shall be breached.

He shall not contact any witness or any other person in an attempt of thwarting the course of justice. His release to be intimated to the IO who shall be free to make arrangements to protect witnesses.

8. This release shall be only on his undergoing the test of COVID-19 both times before he goes from the jail and at the time of surrender, and only subject to his testing negative, such release will be permitted. After attending the post death ceremony, he shall surrender. On his return to the jail, the test shall be done and till the report comes, he shall be kept in quarantine area.

9. The applicant if is not desirable to undergo any of these formalities, he be permitted to meet the family through video

conferencing for which the following broad procedural modalities are being provided.

9.1. Let the jail authority make an arrangement through official mobile number of the Jail Superintendent and, at the other end of applicant's family, the Police Officer of the vicinity (Investigation Officer or anyone deputed by him not below the rank of PSI) shall provide necessary support and shall get connected with the Jail authority. Police officer shall ensure such meeting. Let the same take place once for minimum 45 minutes.

10. This application is disposed of accordingly. Copy of this order be given to learned APP for its onward communication and due execution.

(SONIA GOKANI, J)

Y.N. VYAS/Bhoomi