IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 202 of 2020

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DHARSHIBHAI HIRABHAI KOLI PATEL

Versus

STATE OF GUJARAT

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Appearance:
V K VYAS(9646) for the Appellant(s) No. 1
DS AFF.NOT FILED (N)(11) for the Opponent(s)/Respondent(s) No. 2
MS KRINA CALLA, APP for the Opponent(s)/Respondent(s) No. 1
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CORAM: **HONOURABLE MR.JUSTICE B.N. KARIA**

Date : 05/02/2020

ORAL ORDER

Learned advocate Mr. Ajay L. Pandav states that he has received instructions to appear on behalf of the respondent No.2 and he will file his vakalatnama before the registry forthwith. Registry is directed to accept his Vakalatnama.

The appellant has filed Criminal Misc. Application No. 4545 of 2019 before the court of learned Sessions Judge, Ahmedabad(Rural) u/s 439 of the Code of Criminal Procedure, 1973 requesting to enlarge the appellant on regular bail on account of offence being registered vide I– C.R. No. 115 of 2019 with Bavla Police Station, Ahmedabad Rural for the offence punishable u/s 306, 504, 506(2) of the Indian Penal

Code and u/s. 3(2)(5)(a), 3(1)(R)(S) and 3(2)(5) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocity) Act, 1989 (for short "the Atrocities Act"), wherein the learned 8th Additional District and Sessions Judge, Ahmedabad Rural rejected the said application on 07.01.2020.

Feeling aggrieved by the said order, the appellant preferred said appeal u/s 14A(2) of the Atrocities Act.

Heard learned advocates for the respective parties and learned APP for the respondent-State.

Learned advocate for the appellant has submitted that the present appellant is wrongly involved in the offence by the Investigating Agency. That, appellant is not involved by any means in the said offence and there is no any even prima facie case against him. That, the appellant is falsely implicated by the complainant in the present scenario of the crime and the complaint clearly disclosed the fact that the complainant has grievance against other accused persons and thus, no prima facie case is made out against the present appellant to constitute an offence. Hence, it was requested by learned advocate for the appellant to quash and set aside the impugned judgment and order passed by the learned Additional Sessions

Judge and enlarge the present appellant on regular bail.

Learned APP for the respondent-State and learned advocate for the respondent No.2 have strongly objected the submissions made by learned advocate for the appellant and submitted that prima facie, involvement of the present appellant is established from the police papers collected by the Investigating Agency during the course of investigation. That, prima facie section 306 of IPC is attracted from the police papers as the present appellant abetted to commit suicide by the deceased. That, disputed land was purchased by Sarojben-wife of the younger brother of the deceased. That, on 13th December 2019, one application was given to Mamlatdar, Bavla by the wife of the younger brother of the deceased. That, on account of not giving possession of the land purchased by Sarojben, the deceased committed suicide. Clear abetment of the present appellant and instigation was proved from the police papers collected by the Investigation Officer during the course of investigation. They also invited attention of this court towards suicide note written by the deceased and submitted that clear involvement of the present appellant is established by the deceased himself in his suicide note. That, no lenient

view can be taken by the court enlarging the present appellant on bail. As the appellant is involved in a serious offence, it was requested by learned APP for the respondent-State and learned advocate for the respondent No.2 to dismiss present appeal.

Having considered the facts of the case, submissions made by learned advocates for the respective parties as well as learned APP for the respondent-State and police papers, it appears from the complaint that it was lodged by the complainant Aantaben Chandubhai Makwana on 14th December 2019. It is alleged in the complaint that disputed land was purchased by Sarojben wife of younger brother of the deceased and registered sale deed was also executed thereof in her favour with an assistance of her advocate as well as consideration of the land was also paid. When the purchaser tried to get possession of the land, present appellant used some derogatory words against the deceased and threatened him to commit his murder saying that he has no right to purchase the land. It also appears from the suicide note allegedly written by the deceased was also found from his pocket. In the suicide note, it was written that his brother was bound to pay Rs. 1,50,000/- to the present appellant and Bharatbhai K. Patel,

however, possession was required to be taken from them. As alleged in the suicide note threat was given by them to commit his murder, and therefore, requested to hand over the possession of the disputed land.

If we consider the provisions of Section 306 of Indian Penal Code, to attract the ingredients of abetment, the intention of the accused to aid or instigate or abet the deceased to commit suicide is necessary. Further to attract the provisions of Section 306 of IPC, there should be clear *mens rea* to commit the offence, it also requires an active act or direct act which lead the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such position that he committed suicide.

Indisputedly, deceased was never purchaser of the land from the present appellant, but land was purchased by Sarojben, who happens to be wife of younger brother of the deceased. As per the suicide note, Rs. 1,50,000/- was to be paid by the purchasers to the present appellant and co accused Bharatbhai Patel. Prima facie this court is impressed that civil dispute is converted into the criminal dispute by the complainant and there is no ingredients attracting Section 306

of IPC, abetment or instigation to commit suicide by the deceased, and therefore, prayer made by the present appellant requires consideration.

Thus, looking to the allegations made against the present appellant in the complaint as well as prosecution papers, this Court is of the view to exercise discretion in favour of the present appellant by releasing him on regular bail.

Thus, considering the peculiar facts of the case, present appeal deserves consideration.

In the result, present Criminal Appeal is allowed and the impugned judgment and order dated 7th January 2020 passed by the learned 8th Additional Sessions Judge, Ahmedabad(Rural), Mirzapur in Criminal Misc. Application No. 4545 of 2019 is hereby quashed and set aside. The appellant is ordered to be enlarged on regular bail on furnishing a bond of Rs. 10,000/- with one surety of like amount to the satisfaction of the trial Court and subject to the conditions that appellant shall;

[a] not take undue advantage of liberty or misuse liberty;
[b] not act in a manner injurious to the interest of the prosecution;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave India without prior permission of the concerned Trial Court;

[e] 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 this Court;

The authorities will release the appellant only if he is 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. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

Notice stands discharged. Direct service is permitted.

(B.N. KARIA, J)

K. S. DARJI