SUPREME COURT OF INDIA

Ghanchi Rubina Salimbhai

Vs.

Metubha Diwansingh Solanki

Crl.A.Nos.885-887 of 2003

(N. Santosh Hegde and B. P. Singh JJ.)

24.07.2003

ORDER

1. Heard learned counsel for the parties.

2. Leave granted.

3. These appeals are preferred against the judgment and order of the High Court of Gujarat at Ahmedabad dated 16-10-2002 made in Criminal Misc. Application Nos. 5894-96 of 2002 and other connected matters whereby the High Court allowed the said application and directed the release of the petitioners mentioned therein on conditions enumerated in the said order. In these appeals, learned senior counsel for the appellant contends that the respondent-accused are accused of very serious crime in which five persons have been murdered and certain properties including the house of the victims set ablaze consequent to which the respondent-accused have been charged of offences punishable under Sections 302, 395, 397, 147, 149, 436, 427, 188 and 120-B of the IPC and Section 135 of the Bombay Police Act. Learned counsel further contends that the learned Sessions Judge when considering the bail applications of the respondent-accused after discussing the evidence on record and after perusing the Police papers came to the conclusion that a prima facie case has been made out against the said accused persons and further bearing in mind the seriousness of the crime and the possibility of the said accused tampering with the witnesses, held that they were not entitled to be enlarged on bail. Learned counsel further submitted that by the impugned order the High Court without properly considering the material on record and without assigning any reason proceeded to enlarge the respondent-accused on bail consequent to which the appellant apprehends no witness will come forward for fear of the clout wielded by the respondent-accused in the village.

4. The respondent-accused in appeal, though served, are not represented before us and have chosen to remain ex parte. While the State of Gujarat is represented, learned senior counsel appearing for the State, contended that it is because of the fact that the counsel appearing for the parties did not press for a reasoned order, the High Court in the impugned order, did not assign any reason for enlarging the respondent-accused on bail. He submits that it is not open

to the appellant to make a grievance of the fact that the impugned order is bereft of reasons. He submitted during the course of arguments, the learned Judge of the High Court had considered the arguments addressed on behalf of the parties and had also perused the material on record.

5. Be that as it may, we do not want to go into this controversy whether a concession was made by the parties in regard to the necessity to give a reasoned order. We think since the trial Court has assigned reasons for refusing bail which includes availability of material to establish prima facie case against the respondent-accused, and looking to the gravity of the offence as also the apprehension of the complainant as to the possibility of interference by the accused with the investigation and threat to the prosecution witnesses in the event of they being enlarged on bail, we think it would have been more appropriate if the High Court could have at least briefly indicated the reasons which it thought entitled the respondent-accused to bail. While saying so, we are not unaware of the fact that any strong expression of opinion in the nature of a finding in a bail application though not binding on the trial Court, could influence the mind of the trial Court since such observation comes from the High Court, still we think it appropriate that some indication of the grounds on which the High Court rejected the findings recorded by the trial Court, should have been reflected in the order by which the High Court reversed such finding. It is all the more necessary for the reason that there is always a possibility of the order of the High Court being challenged in appeal before this Court in which event this Court is entitled to know the basis of the impugned order. For the above reasons, we are of the opinion that the impugned order of the High Court should be set aside and the matter be remitted back to the High Court for fresh consideration, bearing in mind the observations made in this order. We also think it appropriate to direct the respondent-accused to be continued on bail pursuant to the impugned order in view of the fact that they have been on bail since 16-10-2002. This direction, however, will be subject to the final order that may be made by the High Court after remand.

6. We make it clear that we have not expressed any opinion on the merits of the applications filed by the respondent-accused for enlargement on bail before the High Court as also the contentions advanced on behalf of the parties before us.

7. The appeals are disposed of accordingly.

Order accordingly.