

Sardarpura Bail Orders

Presented by : G. S. Rajput,

On dated : 20th April, 2002.

Misc. Criminal Application No.532/2002

In the Court of Sessions Judge, Mehsana.

Applicants : (1) Patel Kachrabhai Tribhovandas, Exh.1

Aged about 55 years, occupation: agriculture 20.4.2002

(2) Patel Karsanbhai Tribhovandas,

aged About 55 years, occupation: agriculture

(3) Patel Vishnubhai Gopaldas,

Aged about 30 years, occupation: service,

(4) Patel Amrutbhai Somabhai,

Aged about 25 years, occupation: agriculture,

(5) Patel Mangabhai Mathurbhai,

Aged about 55 years, occupation: agriculture,

(6) Prajapati Bharatbhai Rameshbhai,

Aged about 28 years, occupation: service,

(7) Prajapati Rajeshkumar Amratbhai,

Aged adult, occupation: study,

All residing at Sardarpura, Taluka Vijapur,

District: Mehsana.

Versus.

Opponent:- The State of Gujarat.

Subject:- Regular Bail Application under section 439 of Criminal Procedure Code.

It is humble submission for applicant of this case that :-

An offence has been registered against the applicants and others persons vide Vijapur Police Station I C.R. No. 46/2002 for the offences punishable under section 147, 148, 149, 302, 337, 324, 323, 436, 325, 120-B of Indian Penal Code and under

section 135 of the Bombay Police Act. The applicants have been arrested in connection with this offence. As the applicants are at present in jail, they have filed this present bail application for releasing them on bail, the grounds of which are as under.

- 1) The applicants have not committed any offence and the applicants do not know anything regarding said offence.
- 2) It has been stated in the complaint that so called incident took place at night of dt. 1.3.2002 and its complaint has been registered on dt.2.3.2002 at 11.30 A. M. and in this complaint the names of none of the applicants have been given. The applicants were arrested by police from their houses and they are arrested long after the time of incident. The applicants have not played any role either directly or indirectly in the so called incident, therefore the applicants should be released on bail.
- 3) The applicant No.1 is the Sarpanch of Sardarpura village and applicant No.2 is an old aged person who is patient of asthma. The applicant no.3 is Secretary of cooperative Milk society and applicant nos.4 and 5 are doing business of agriculture. The applicant No.6 is handicapped and is serving and applicant No.7 is studying.
- 4) The investigation of this case is almost completed, therefore no question is arising of the absconding of applicants or to prevent the witnesses from making deposition.
- 5) The immovable and movable properties of the applicants are situated at village Sardarpura, Taluka Vijapur District Meshing, therefore no question will arise of their absconding any where or to keep away from the court proceedings.
- 6) Though there is no evidence against the applicants, in the context of the incident took place in reaction of the Godhra killings on dated 27.2.2002, the applicants have been falsely implicated. The applicants have not played any role either directly or indirectly in the said incident, however by arresting the applicants from their houses, false case has been filed against them.
- 7) The applicant No.1 is uncontested elected Sarpanch of the village and Manager of the Cooperative milk society. If the applicant No.1 is kept in jail then the work of Gram Panchayat required to be done by him in the village as social worker and of agriculture is delayed therefore the applicant should be released on bail.

- 8) The applicants are persons/members of farmer community and as at present the season of cultivation is on, if the applicants will not be released on bail then big damage will be caused to their crops and there is nobody who can feed grass and provide drinking water to our animals.
- 9) The applicants will completely abide by all the conditions which may be imposed by Hon'ble Court on the applicants.
- 10) The further facts will be declared at the time of hearing.

It is therefore prayed that,

Considering above all facts and grounds, the applicants may be released on bail of proper and reasonable amount in connection with Vijapur Police Station I C. R. No. 46/2002.

Date: 20.4.2002

For applicants,

Place: Mehsana.

Advocate.

Application presented by

Advocate Shri GS Rajput is

Examined and it is registered.

20.4.2002 Sd/- Dy. Registrar,

Sessions Court, Mehsana.

ORDER

To be made over illegible to the

Court of 2nd Joint District Judge, Mehsana

For hearing and disposal in accordance with law.

Dt.20.4.02

Sd/- Sessions Judge,

Mehsana.

An order below Exh. 1

Criminal Misc. Application No. 532/2002 and
Criminal Misc. Application No. 576/2002 and
Criminal Misc. Application No. 577/2002.

1. The applicants/accused of above all three Criminal Misc. Applications have filed these Regular Bail Applications under section 439 of the Criminal Procedure Code, in connection with the Vijapur Police Station's I C.R. No.46/2002 for an offence punishable under section 147, 148, 149, 302, 337, 323, 324, 325 of Indian Penal Code and under section 135 of Bombay Police Act and under section 307, 397 of Indian Penal Code etc.

2. The fact of the case of the prosecution is that, complainant Ibrahimbhai Rasulbhai Shaikh filed a complaint on dated 2.3.2002 and stated that he is residing at Sardarpur village in Shaikhwas. There was a call of "Bharat Bandh" on dated 1.3.2002 pursuant to an incident took place at Godhra, due to which they all were present at their house. At eleven thirty p.m. at night the people of Patel community of his village started breaking their cabins and by making stone pelting they burnt the same and the mob of people of Patel community of about one thousand came making stone pelting on their house and by carrying arms like sticks, wooden sheets, dharia etc.. in their hands and as there was shouting the vehicle of police came and police made firing to scatter the mob, therefore the people of mob ran away. Thereafter, after some time again the mob of people of Patel community gathered and came and started setting fire the houses. The persons of this mob were pouring petrol and kerosene and were burning the houses. As they were stone pelting the complainant also challenged them, but as the figure of persons of mob was more, and as he was frightened he came back. The complainant has further stated that as light was on he identified the persons of this mob wherein there were following persons and complainant has given their names in his complaint as 1) Ambalal Maganlal Patel 2) Rajeshkumar Punjabhai Patel etc. names of 28 persons in his complaint who all are residents of Sardarpur village of Vijapur Taluka. The complainant has further stated that, as these persons made stone pelting on their houses, stones were hit on him

and his family members. The complainant has further stated that stones were hit at part of his head, at left hand and leg and on his back. The complainant has further stated that as his son in law Mehmud Miyan Husainmiyan had a *pucca* constructed house all the women, children and men of his family went in his house for safety. The complainant has further stated that he stayed in his own house. The above accused and persons of the mob started breaking the residential houses and burnt the same and caused damage. After some time the rioting mob went away. The complainant has further stated that when he went to the house of his son in law, he saw persons of this mob burning all the persons hiding in his house. The complainant has further stated this in his complaint and named the men, women and children who were burnt by mob ---their names are stated in the complaint. Moreover, in this incident the victim injured persons Iqbalmiyan Rasulmiyan, Filjubmiyan Husenmiyan, Mustumiyan Rasulmiyan, Najirmiyan Akbarmiyan, Gulab Ali, Akbarmiyan and Farida Bibi, Afikmiyan, Bashirbibi, Bachumiyan and Rukshana and Aminabibi etc.. 15 to 17 persons sustained injuries. The injured persons were sent at government hospital and the dead bodies of the deceased victim persons were also sent to the government hospital. The complainant has further stated that on dt.2.3.2002 at night during hours 11.30 to hours 2.30 at night on early morning of dt.2.3.2002 the persons of the mob had stone pelting and throwing burning objects, had burnt the houses, shops, vehicles and persons, and detailed complaint regarding that has been lodged.

1. Total 20 persons being applicants of Criminal Misc. Application No. 532/2002, Criminal Misc. Application No. 576/2002 and Criminal Misc. Application No. 577/2002 have filed this Regular Bail Application under section 439 of the Criminal Procedure Code.

2. In this case the applicants/accused who filed bail applications, their names are not appearing in F.I.R. The 28 persons the names of whom are given in F.I.R. out of them no accused has filed bail application. Thus, the persons the names of whom were disclosed afterwards during the investigation and who were arrested out of them 20 persons have filed this bail application.

3. The applicant of Criminal Misc. Application No. 576/2002 Prajapati Gordhanbhai Revabhai and Prajapati Dahyabhai Varvabhai have again filed this bail application.

Earlier these two persons filed Criminal Misc. Application No. 287/2002, which was came to be rejected and that application and judgment has been produced in this case. But it is necessary to make a reference here that the bail application being Criminal Misc. Application No. 287/2002 of applicant/accused Prajapati Gordhanbhai Revabhai and Prajapati Dahyabhai Varvabhai was not decided on merits. Thus, the bail application of said two accused was not decided earlier on merits, in that circumstances, the application of both the accused is maintainable.

4. Heard learned Advocate Shri B. C. Barot for the applicants/accused in this case and heard Learned Public Prosecutor Shri D. R. Trivedi for the government.
5. In this case from the complaint of the complainant the fact becomes clear that on dated 1.3.2002 of incident at 11.30 at night a mob of one thousand people of Patel community came and was doing stone pelting and was burning and at this time police came and fired, therefore the mob was scattered. Police Sub Inspector Shri M. S. Rathod has filed a complaint regarding this for police, who has been produced at Vijapur Police Station vide I C. R. No. 45/2002. Learned Advocate Shri B. C. Barot for the applicants/accused while making arguments submitted that looking to this complaint of I C.R. No.45/2002 there is no name of any person therein. Learned Advocate Shri Barot stated that as per complaint of the complainant police, they came and made firing therefore mob was scattered and mob went away. If the Muslims had identified the persons of mob then when police came at that time they would have given names of persons of mob to police, but no such fact has been found in the F.I.R. of I C. R. No. 45/2002.
6. Learned Advocate Shri B. C. Barot for the applicants/accused while making arguments contended that as per the F.I.R. of the present offence, first a mob of one thousands persons of Patel community comes and police scatters them and

Again mob comes and on both this occasions whether 28 persons as mentioned in F.I.R. were accompanying mob or not that is clearly not found. Learned Advocate Shri Barot has stated that the mob which came on the first occasion and the persons therein who were seen by complainant cannot be present in the second mob, but of

the 28 persons the names of whom are given in F.I.R. no person out of those persons have filed bail application. In that circumstances said issue does not arise.

7. Learned Advocate Shri Barot has stated in his arguments that, as per the complaint of the complainant a mob of one thousand people came and that mob was not such who can commit murder and who can commit looting and who can burn the houses as they have no criminal past history. Learned Advocate Shri Barot has argued that it was the incident which took place at Godhra due to which, the Muslim people have instigated the Hindu people and due to this, the present incident took place, but it cannot be said that they had provocation for the same. It cannot be said that provocation was made to the mob due to the incident that took place at Godhra dated 27.2.2002, but one fact is clear that the incident which took place at Godhra on dated 27.2.2002 pursuant thereto a reaction has come. This reaction is not an incident. It cannot be accepted as a defence, but along with that it is also pertinent to note whether any applicant/accused has not been involved in criminal activity earlier? It is not the past history of applicants/accused that they are murderers, setting fire houses or looting any body.
8. In this case Learned Advocate Shri B. C. Barot for applicant/accused has stated in his arguments that, in the complaint of the complainant, the complainant is not stating any fact which identifies the detailed role or action of each accused. It was thereafter that the facts of witnesses as to which accused had played what role was an after thought with facts being slowly arranged by witnesses and it seems that they tried to identify different persons. In this case in the complaint of complainant, clearly, except 28 persons names of no other persons are given and there is no reference as to what part was played by these 28 persons. Thereafter on 3.3.2002 the statements of 5 to 6 witnesses were recorded. Out of these, looking at the statements of Bachumiyan Imammiyan he has stated that 'I was hiding and after hiding, I had seen there were Patel Kachrabhai, Rameshbhai and Patel Pujabhai etc. persons.' Thus, as per the facts of the complainant and witness when serious incidents were taking place and stone pelting was going on, and houses were being burnt and in these circumstances they were seeing the incident taking place from place at a distance by hiding there and they identified the persons of mob, this fact prima facie creates doubt. The statement

of witness Sharifabibi Bachumiyan has been recorded on 3.3.2002. She has stated these facts in her statement, that she heard the voice from a window and at that time this voice was that of Patel Ramanbhai Ganeshbhai and Pashabhai Mohanbhai and Ashwinbhai Baldevbhai. Thus, when persons of mob were shouting at night and making noises, at that time she heard voice of these three persons that is considerable. In the same manner, the statements of witness Sabir Husen Imamsha, Sahrabanu daughter of Sabir Husen and Sharifabanu are recorded on 3.3.2002. All these three witnesses state that they identified the accused in the moon light and identified the accused from their voice. This fact also proves that there was no light at the place of incident, but as it was night time and there was a mob of one thousand persons and they identified the accused in the moon light it is prima facie very difficult to believe the same. The statement of witness Sabir Hussain Imamsha has been recorded on 3.3.2002. He has stated in his statement that he was hiding at some distance and from there he has seen there was a dharia in the hand of Patel Ambalal Maganlal, stones in the hand of Kanubhai Karshanbhai Patel, iron pipe in the hand of Jivanbhai Dwarkabhai Patel, dharia in the hand of Rameshbhai Ramabhai Patel, and stones in the hands of Prajapati Ravikumar Amrutlal, Rohitkumar, Ramanlal Prajapati and Bharatbhai Rameshbhai Prajapati and he has also stated the names of other persons. Thus the person who was seeing from some distance, in that circumstances it creates doubt that he had identified the persons of mob.

9. The statement of Mohammed Sattar Bachumiyan has been recorded on 2.3.2002. He has stated in his statement that he was hiding in his house and he switched off the light in his house and when he looked out from the window, then he has seen some persons and he has given their names in his statement. Thus when stone pelting was freely going on, and there is charge of throwing burning sticks, he was seeing it by opening the window that prima facie this creates a doubt such as is found. In the same manner witness Farjanabanu, daughter of Bachumiyan Imambhai also states that while she was going to the house of another person for survival at that time she

identified some persons. Witness Farjanabanu daughter of Bachumiyan Imam states and names some persons out of the mob who came for first time, whereas when the mob came the second time, she had left running towards the house of Mehboob and at that time she had seen Patel Ambaram Maganlal and Patel Raghunath Revabhai and Prajapati Rohitkumar Ramanbhai and mob of about one thousand people and states to have identified them. But it is very difficult to believe that when a person is going from one place to another, from one house for survival under these circumstances she could have identified the persons from the mob. Witness Faridabibi Bachumiyan and Sahrabanu states in their statements dated 3.3.2002 that they identified some persons from the tone of their voice. In the police investigation the statements are recorded on 6.3.2002 and also again on dt.10.3.2002.

10. Learned Advocate Shri B. C. Barot, for applicants/accused while making arguments submitted that the street light was put off at Sardarpur village for last 2-0 months. This street light was closed due to non payment of electricity bill. Thus, on the day of incident there was no electric light at Sardarpur village on the public road or in public streets or poles. In these circumstances, these fact cannot be believed that the complainant or any witness could have identified any person. Learned Advocate has produced the certificate issued by Talati of Sardarpur Gram Panchayat for applicants to show this fact. Learned Advocate Shri Barot has stated in his arguments that the incident took place between the period 11.30 p.m. to 2.30 a.m. and it is doubtful that the complainant or witnesses had identified anybody in the darkness of the night. Learned Advocate Shri Barot has stated that if the complainant had identified 28 persons and had seen them actually carrying arms in their hands and also seen what they were doing, they would have stated these facts in detail in the complaint but the fact that there are no such facts in the complaint and also looking at the fact that it transpires that complainant has not seen the incident taking place, the complainant has simply named the 28 persons from the village whom he knows.
11. From the above facts, one fact becomes clear that, the incident takes places between 11.30 and 2.30 p.m. through the night. There was darkness at this time. This fact is stated in the F.I.R. that when the first mob came, at the time, the police fired and all the witnesses are silent regarding when the police left. In normal circumstances when

the police fired and the mob scatters, at that time the police must be there at the place of incident. The names of the present applicants/accused are not there in F.I.R. In the F.I.R. there is no reference as to which person from the mob had played what role and what arms he was carrying. The person who comes forward to lodge complaint is not stating anything in his complaint regarding detailing what part was played by which person in the mob and who was carrying what arms. In the statements of witnesses, it is later and gradually that these particulars are given.

12. Thus, different witnesses are stating different facts to give support to the complaint for prosecution afterwards, post facto. Some witnesses have stated that they saw the accused in the moon light. Some say that they have seen the accused from a distance. All these facts create a doubt about the fact of whether they actually identified present applicants/accused in the darkness of night.
13. Learned Advocate Shri Barot while making arguments stated that a period of two months has passed after the incident taking place. Only two accused had earlier filed bail applications, but those bail applications were rejected without any discussion on merits. The applicants sat in jail for two months expecting the improvement in situation. The applicants/accused have also the right to freedom from confinement. Learned Advocate Shri Barot has stated that applicants/accused have been falsely implicated. As the complainant and witnesses are residents of same village, it is due to this fact that he has easily given false names. Learned Advocate Shri B. C. Barot has submitted that perusing the complaint and the improvement made in it thereafter by witnesses, it appears that an effort has been made to implicate false persons later.
14. The present applicants/accused have filed this bail application two months after taking place of incident. The incident of Sardarpur is serious and condemnable, but along with that it is necessary to think as to whether there is prima facie case against the applicants/accused or not. The incident took place at night time. The manner in which complainant and witnesses were hiding and while hiding...they identified present applicant/accused that prima facie creates a doubt. It is prima facie not reasonable to assume that they had identified them by their voice and in the moon light.

15. Thus, looking over all these facts, it is found just and reasonable to allow regular bail to the present applicants/accused, therefore following order is passed.

TRUE COPY	Application No. 909
Zerox page 12	This copy applied by Spl. P.P. S. C. Shah
Words	Registered on dated 14.11.2003 Sd/-illegible
English	Twenty seventh November, 2003 Sd/-illegible
Rs. ps.	Copy prepared on dt. 27.11.2003 Sd/-illegible
Zerox copying fee	Copy delivered on dt. 27.11.2003 Sd/-illegible
Certified fee	
Surcharge	
Paper charge.	

Compared by	Round seal of court	True Copy,
Sd/-illegible		Sd/-illegible
Assistant		Additional Registrar, District Court, mehsana.

Presented by Shri C. S. Rajput

On this 3rd day of May, 2002,

Sd/-illegible

Registrar,

District Court, Mehsana.

Criminal Misc. Application No. 610/2002

Exhibit 1

3.5.2002

In the Court of Sessions Judge, Mehsana at Mehsana.

Applicant: Prajapati Rohitkumar Ramanlal,

Aged about 16 years, occupation: study,
Residing at Sardarpura, Taluka Vijapur
District Mehsana.

Versus.

Opponent: The State of Gujarat.

Subject:- Bail application under section 439 of the Criminal Procedure Code.

It is humble submission to the Hon'ble Court for applicant that :-

An offence at the Vijapur Police Station I C. R. No. 46/2002 has been registered against the applicant and other persons for offence punishable under sections 147, 148, 149, 302, 337, 436, 323, 325, 397, 324 and 120B of Indian Penal Code and under section 135 of Bombay Police Act. The applicant has been arrested in connection with this offence. The applicant had filed Criminal Misc. Application No. 273/2002 on dt.13.3.2002 for releasing the applicant on bail. The applicant is a student and for appearing in examination (illegible) and temporary bail was granted in the favour of applicant by imposing some conditions on a bail amount of Rs.10,000/- and on dt.1.4.2002 between period from 8.00 A.M. to 11.00 A.M., applicant should appear before the Superintendent of Jail after which the Jail applicant is released. Such an order was passed by Additional Sessions Judge Shri D. R. Shah, but due to disturbed and tense situation some change was made in the program of examination and examination of the applicant starts from dt.4.4.2002 and completes on dt. 18.4.2002, therefore vide Criminal Misc. Application No. 371/2002 the applicant prayed to extend the temporary bail for that period and as that application was heard the Hon'ble Court has released the applicant on temporary bail till 18.4.2002 by imposing some conditions. Thereafter the applicant appeared in Sub Jail, Mehsana as per the order of Hon'ble Court and the applicant is at present in jail. The co accused of this case filed Criminal Misc. Application No. 576/2002, 532/2002, 577/2002 in the Hon'ble Court the hearing of which has been made on dt.30.4.2002 and the case is on order. As the applicant is in jail, the applicant is filing this present bail application the grounds of which are as under.

Grounds of application: -

1) The applicant does not know anything regarding the said offence.

The applicant is aged 16 years and he was studying in standard 11. The applicant has no enmity with the complainant.

- 2) The so-called incident took place in reaction to the Godhra Killings that took place on dt.27.2.2002.
- 3) The investigation of this case is almost completed, therefore there is no possibility of preventing the witnesses from making deposition or to tamper with the evidence.
- 4) Whichever orders will be passed by the Hon'ble Court the applicant will completely comply with the said orders.
- 5) The name of the applicant is also not there in complaint and in the case of investigation no direct or indirect evidence has been found against the applicant.
- 6) The applicant is residing at village Sardarpura, Taluka Vijapur District Mehsana with his family, therefore he is not such a person who will abscond any where or will tamper with the evidence.
- 7) The further facts will be declared at the time of hearing.
- 8) It is therefore prayed that,

Considering the above facts, the applicant may please be released on bail in connection with Vijapur Police Station's I C. R. No. 46/2002 for the offences

punishable under section 147, 148, 149, 302, 337, 436, 120B, 323, 324, 325, 397 of Indian penal Code.

Date: 3.5.2002

For applicant

Mehsana.

Advocate.

Memo of Appeal/application presented 6.5.2002

By applicant's advocate

Order

Shri C.S. Rajput

To be made illegible

Is examined and ordered to be registered

for hearing and illegible

Dt.3.5.2002

Date: 3.5.2002.

Ex. 1

Criminal Misc Application No. 610/2002

1. The applicant/accused of above Criminal Misc. Application has filed this Regular Bail Application under section 439 of the Criminal Procedure Code, in connection with the Vijapur Police Station's I C.R. No.46/2002 for an offence punishable under section 147, 148, 149, 302, 337, 323, 324, 325, 436, 307, 397, 120B of Indian Penal Code and under section 135 of Bombay Police Act.
2. The fact of the case of the prosecution is that, complainant Ibrahimbhai Rasulbhai Shaikh filed a complaint on dated 2.3.2002 and stated that he is residing at Sardarpur village in Shaikhwas. There was a call of "Bharat Bandh" on dated 1.3.2002 pursuant to an incident that took place at Godhra, due to which they all were present at their homes. At eleven thirty p.m. at night the people of Patel community of his village started breaking their cabins and through heavy stone pelting, the mob consisting of persons belonging to the Patel community of about one thousand came attacked their house carrying arms like sticks, wooden sheets, dharia etc.. in their hands also shouting . The vehicle of police came after some time and the police fired to scatter the mob. Therefore the people of mob ran away. Thereafter, after some time again the mob gathered and came and started setting fire to the houses. The persons of this mob were pouring petrol and kerosene and were burning the houses. As they were stone pelting, the complainant also challenged them, but as the mob was huge, and as he was frightened he came back. The complainant has further stated that as light was on he identified the persons of this mob wherein there were the following persons and complainant has given their names in his complaint as 1) Ambalal Maganlal Patel 2) Rajeshkumar Punjabhai Patel etc. , the names of 28 persons in his complaint who all are residents of Sardarpur village of Vijapur Taluka. The complainant has further stated that, as these persons committed heavy stone pelting on their houses, he was hit by a stone as also his family members. The complainant has further stated that stones were hit on a part of his head, on his left hand and leg and on his back. The complainant has further stated that as his son in law Mehmud Miyan Hussainmiyan had a *pucca* constructed house all the women, children and men of his family went

in his house for safety. The complainant has further stated that he stayed back in his own house. The above accused and persons of the mob started breaking residential houses and burnt the same and caused damage. After some time the rioting mob went away. The complainant has further stated that when he went to the house of his son in law he had seen that all the persons hiding in his house were burnt by persons of this mob. The complainant has further stated and named in his complaint the men, women and children who were burnt by mob. Moreover, in this incident the victim injured persons Iqbalmiyan Rasulmiyan, Filjubmiyan Hussainmiyan, Mustumiyan Rasulmiyan, Najirmiyan Akbarmiyan, Gulab Ali, Akbarmiyan and Farida Bibi, Arifmiyan, Bashirbibi, Bachumiyan and Rukshana and Aminabibi etc.. 15 to 17 persons sustained injuries. The injured persons were sent to the government hospital and the dead bodies of the deceased victim persons were also sent to the government hospital. The complainant has further stated that on dt.2.3.2002 at night during 11.30 p.m. to 2.30 a.m. at night, that is in the early morning of dt.2.3.2002 the persons of mob had by heavy stone pelting and attacks, burnt the houses, shops, vehicles and persons, and a detailed complaint regarding these facts has been lodged.

3. The applicants/accused Prajapati Rohitkumar Ramanlal of Criminal Misc. Application No. 610/2002 has filed this application. Looking at the F.I.R. the name of applicant/accused does not appearing in F.I.R. Looking at all the police papers in this case, the fact also becomes clear that applicant/accused was only included as part of a mob and there only this charge against him. The witnesses are not stating any such fact that applicant/accused had any arm. No such fact is also found that the applicant had carried any inflammable material. The applicant/accused is aged 18 years. The accused is young and he is studying. The applicant/accused was earlier also released on bail for some time due to his studies. If the applicant/accused is kept in jail, he will not be able to proceed further with study. Moreover, when looking at all the police papers/documents the only charge against the accused is participation and presence in the mob. Considering this, it is found to be just and reasonable to release him on bail.
4. Only Shaikh Ashik Husen Bachumiyan, Shaikh Firoza daughter of Bachumiyan, Fakir Sabir Husen Imamsha and Shaikh Hiljubmiya Husen Miyan have stated facts against applicant/accused. Except these four no other witnesses have stated anything

specific about him. All these four witnesses have stated the fact that this applicant/accused was there in the mob. Witness Ashik Husen Bachumiyan states that he was hiding and he had identified applicant/accused in this mob which is difficult to believe.

5. Thus it is difficult to accept that the witness identified the present applicant/accused in a mob of one thousand people, especially when the light was not on and it was dark at that time. It is difficult to believe that he was accompanying the mob of one thousand people. The statement of the Talati of village has been recorded regarding fact that light was not on at the time of incident and he states that as the bill of light was not paid the light was not on for the last three to four months.
6. Thus, the applicant/accused had no lethal weapon and no such fact has been found to show that he had played any active role in the commission of the offence. Thus, considering the facts and circumstances of the case, it is just, reasonable and proper to grant bail to the applicant accused, therefore following order is passed.

/ Order /

The application of applicant/accused for being released on regular bail is allowed. The applicant accused is ordered to be released on regular bail in connection with Vijapur Police Station's I C.R. No.46/2002 for an offence punishable under section 147, 148, 149, 302, 307, 336, 323, 324, 325, 377, 436, 397, 120(B) etc. of I.P.C. and under section 135 of Bombay Police Act on his furnishing bail bond of Rs. 10,000/- (Rupees ten thousands) and personal bond of like amount subject to following terms and conditions.

Conditions:

- 1) The applicant/accused shall not intimidate the prosecution witnesses.
- 2) The applicant/accused shall not enter the Sardarpur village.
- 3) The applicant/accused shall regularly mark his presence on dated 10th, 20th, and 30th of each month in Vijapur Police Station during hours 9.00 A.M. to 12.00 Noon.
- 4) The applicant/accused shall declare his residential address before the investigating officer.

- 5) The applicant/accused shall not leave the boundary of Gujarat State without permission of this court.
- 6) If applicant/accused has passport then he should produce the same before investigating officer and if he has not the passport then he shall make writing regarding that.

Pronounced this order today on dt.10th May, 2002 in open court.

Date: 10.5.2002

Sd/-(D.R. Shah)

Mehsana

Additional Sessions Judge, mehsana

TRUE COPY

Application No. 945

Zerox page 7

This copy applied by Spl. P.P. S. C. Shah

Words

Registered on dated 24.11.2003 Sd/-illegible

English

Twenty seventh November, 2003 Sd/-illegible

Rs. ps.

Copy prepared on dt. 27.11.2003 Sd/-illegible

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Copy delivered on dt. 27.11.2003 Sd/-illegible

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Round seal of court

True Copy,

Sd/-illegible

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Assistant

Additional Registrar,

District Court, Mehsana.

Presented by Shri(not legible)Rajput, Advocate

On this 31st May, 2002

Sd/-Registrar,

District Court, Mehsana.

In the Court of Sessions Judge, Mehsana.

Exh.1 2.5.02

Criminal Misc. Application No. 611/2002

- Applicants:
1. Patel Ambalal Maganlal,
 2. Patel Rajeshkumar Punjabhai
 3. Patel Chaturbhai Kanabhai,
 4. Patel Rameshbhai Kantibhai,
 5. Patel Jagabhai Davabhai,
 6. Patel Baldevbhai Ranchodbhai
 7. Patel Sureshbhai Baldevbhai
 8. Patel Chaturbhai Vitthalbhai
 9. Patel Rajeshkumar Karsanbhai
 10. Patel Madhabhai Vitthalbhai
 11. Patel Rameshbhai Prabhabhai
 12. Patel Bhikhabhai Jyotibhai
 13. Patel Bakabhai Mangalbhai
 14. Patel Kalabhai Nathabhai
 15. Patel Rameshbhai Kanjibhai
 16. Patel Pasabhai Mohanbhai
 17. Patel Tulsibhai Girdharbhai
 18. Patel Prahladbhai Jagabhai
 19. Patel Ashwinbhai Jagabhai,
 20. Patel Sureshbhai Ranchhodbhai
 21. Patel Ramanbhai Jivanlal,
 22. Patel Jayantibhai Jivanbhai,
 23. Patel Vishnubhai Prahladbhai,

 24. Patel Dashrathbhai Ambalal,
 25. Patel Rameshbhai, Ramabhai,

All aged adult, all residing at
Sardarpura, Taluka Vijapur District mehsana.

Versus.

Opponent:- State of Gujarat.

Subject:- Bail application under section 439 of Criminal Procedure Code.

It is the humble submission for applicants of this case to the Hon'ble Court that,

1. One Shri Ibrahimbhai Rasulbhai Shaikh, has by disclosing his complaint and the facts contained in Vijapur police station on dated 1.3.2002, in the context of the communal riots spread in Gujarat, following the killings that took place at Godhra on dt.28.2.2002, has filed a complaint against applicants and others of this case for the offences punishable under section 147, 148, 149, 302, 324, 436, 323, 325, 397, 120B of I.P.C. and under section 135 of Bombay Police station which has been registered vide Vijapur police station's I C. R. No.46/2002. On the basis of that complaint the Vijapur police has registered an offence and has arrested the applicant accused in this case and as they are at present in judicial custody, it is required to file present application to release them on bail.
2. As alleged in the complaint, the applicants/accused in this case and other rioting mob of about one thousand persons, carrying sticks, dharia, stones, and wooden sheets etc.. arms made an assault on, by breaking the houses and shops of Muslims and by setting them on fire, they have caused damage to the same, and as Muslims burnt Hindu people at Godhra, pursuant to that, by delivering a blow on the complainant and witnesses, using arms and by causing more and less injuries by burning the persons of the family of the complainant, they have committed their murders and committed breach of notification etc. These are the main allegations contained in the above facts.
3. The applicants/accused are compelled to file this present application to release them on bail the main grounds of which are as under.

Grounds: -

1. The applicants of this case are completely innocent and they have not committed any so called offence.
2. The applicants of this case are implicated in this offence falsely on mere suspicion.
3. The names of applicants of this case are mentioned in the complaint on the basis of only that suspicion or prejudice has been shown. In real fact the applicants/accused of this case were not and are not knowing anything about so called incident, but they are falsely implicated with prejudice in the communal situation spread out in Gujarat after the Godhra killings.
4. Moreover upon perusing the complaint of the complainant the fact is undisputed that it has been stated that there was mob of about one thousand people except applicants/accused of this case and upon perusing the whole complaint of complainant, no such clear fact comes out from the complaint as to at which place and which accused had played which role or committed which criminal act. Not only this but during the investigation also no such clear fact or evidence has come on record that the applicants/accused of this case played any role in any manner in the said so called incident or they were present at place of incident and therefore also as applicants/accused of this case they have been falsely implicated in this serious offence, it is required to release them on bail.
5. Upon perusing all the papers of investigation, no prima facie case is attracted against the present applicants/accused in any manner.
6. The applicants are relying upon some principles laid down by Hon'ble High Court and Hon'ble Supreme Court, in this regard, wherein it is found necessary at this stage to cite the observations on page 78 in 2001

(1) Cases on Articles and human rights and considering said observations, the present applicants/accused should be released on bail.

“© Consideration, but down by the Court in granting bail.

- (i) Nature and seriousness of offence, character of evidence, whether attendance of accused could be easily secured at the trial, tampering of evidence, tampering of witnesses.
 - (ii) Whether grant of bail would defeat proper investigation.
 - (iii) High Court has special powers to grant bail in the offences punishable with death.
 - (iv) Position and status of accused.
 - (v) Likelihood of accused fleeing from justice.
 - (vi) Chances of repeating the offence.
7. Moreover, in the above judgment i.e. judgment referred to of 2001(1) Cases on Atrocity and rights of human page 84, 85, 86 the observations of facts taken as principle of judgment and observations as per statutory principles laid down in its context are mentioned in para 8,9, 11 of said judgment and all those facts should be taken into consideration at the time of deciding this present bail application.
8. Moreover besides the statutory principles laid down above, it is necessary to consider the below mentioned judgments also at the time of deciding the bail application.

1990(3) Crimes Page-423, Dilavar Hussain, etc.. V. State of Gujarat & anr. Section 302/34 r/ws. 436,149, 449, 143 & 148 Conviction under-Appeal-Communal riots between Hindu & Muslims-Prosecution case of attack by the mob on the house of the deceased-Appellants allegedly broke open the door of the house, set fire to it and chained it from outside. Appellants according to prosecution were in the mob. There is no whisper of the place from where the incident was seen by the witnesses-Identification of accused from out of the mob even if they were known from before was highly doubtful-witnesses were so terrified due to the

the incident that they could not remain outside---the prosecution version has suffered from a lacuna which is fatal. A doubt is created whether or not the witnesses saw the occurrence at all and this is strengthened by subsequent

conduct and behaviour of these witnesses---It is and was against normal human behaviour---Witnesses and circumstances are both against the prosecution version--- failure to produce the Chief Fire Officer, to establish if house was chained from outside---order to acquittal.

Moreover as per principle laid down in the case of 1996 (2) Crimes page 99 (R.Co.) Merambhai Punjabhai Khachar Versus State of Gujarat: Indian Penal Code 1869 Conviction of 15 appellants under legality if prosecution case that appellants, all of whom belong to Darbar Community, were animated by common object of murdering complainant and other Kolis of village--- Appellants having Fire arms with them--Nature of injuries sustained on person of complaint party other than deceased, show that they were not serious injuries-considering facts & circumstances section 149 held not applicable- Acts of appellants did not attract section 3 TADA-Kolis had not Felt insecure. Pws.2,3,4,5 & 7 deposed that deceased was hit by shot fired by appellant No.1. He is a convicted under section 302, appellants acquitted of charge under section 302/149 and under section 3 TADA.

9. Moreover, as per principle laid down by the Hon'ble the Supreme Court in the judgment of 2002 Criminal Law Journal page 3 in the case of Harsiddheshwar Pashwan and others Versus. State of Bihar, the prosecution has an important liability to prove its case, in a blow by blow account regarding which accused has caused the death of the deceased, but in the present case, on a prima facie perusal of the complaint of the complainant no such fact transpires from the complaint, because the fact that there was mob of about one thousand people, in that circumstance, prima facie, it is found necessary and just to grant the bail application of applicants. Moreover, considering this very fact, it is also necessary to take into consideration the principle laid down in 2002 Criminal Law Journal page 56 in the case of Jassasing and others. Versus. State of Haryana.
10. Moreover, as per principles laid down in Criminal Law Journal page No. 725 and in another judgment in the case of Shivajidan Patil mentioned in said judgment, if the complainant or witnesses know the names of "arrolent" and

are identifying them after seeing them, then they should immediately state to police that they are the eye witness of incident. As per principles laid down by Hon'ble Supreme Court in the case of A.I.R. 75(Supreme Court) page 775 Babuli Versus. State of Orissa, if the eye witness declares the fact of incident late after "20 hours" then due to his unnatural conduct his evidence cannot be legally accepted for any purpose. In this case also considering the time of the occurrence of the so called incident and the declaration of incident also, this case of prosecution becomes doubtful and the Hon'ble Supreme Court has laid down by principles of different judgments that the benefit of the doubt in such a case should be given to the accused.

11. Moreover, the applicants are also placing reliance on the principle laid down in the case of 1998(1) Supreme Court (Criminal) Page 8 in the case of Kota Prakashan and others Versus. State of Kerala and the principle laid down in the case of 1997 (1) Crimes page 121 (Supreme Court) State of U.P. Versus. Dansing and others.
12. Moreover in the case of well known judgment of Hon'ble Supreme Court in the case of Bhagirathsinh Jadeja Versus. State of Gujarat also Hon'ble Supreme Court has given some guidelines in the context of bail and according to that if there is such possibility that the accused will remain present during the trial and when there is found no possibility of his tampering with witnesses or absconding, then, even in the most serious cases, too, the accused should be released on bail.
13. Moreover, on perusing the complaint, and the facts of this case then the sections prima facie made applicable cannot be applicable or made applicable against applicants/accused of this case.
14. Considering above all the judgments and the principles laid down therein and the papers of the investigation, there is strong case to grant bail to the present applicants, and in the papers of the investigation prima facie there is weak and unbelievable evidence, and pursuant to that the bail cannot be refused to the applicants.

15. The applicants of this case have families and they are prestigious citizens and they are holding immovable and movable properties and they are not ones who will abscond.
16. The applicants are ready and willing to comply with all the conditions which may be imposed by Hon'ble Court in this case and the important investigation of case is about to be completed.
4. It is therefore prayed that :-
- (A) Be pleased to pass an order releasing the applicants/accused of this case on bail under section 439 of Criminal Procedure Code in connection with Vijapur Police Station's I C. R. No. 46/2002, in the interest of justice.
- (B) Any other and further orders which may be deemed fit and proper by Hon'ble Court may be passed.
5. The vakalatnama, and copy of complaint are enclosed herewith and the copy to be furnished to the opponent is also enclosed herewith and Xerox copies of judgments cited are also enclosed herewith.

Mehsana.

Date: 4/2002

Sd/-illegible

3.5.2002.

Memo of the application presented by

Advocate Shri (not legible) Rajput

Is examined and ordered to be registered.

Dt. Sd/-Dy. Registrar,

Sessions Court, Mehsana.

ORDER

To be made over illegible to the

Court of 2nd Joint D. J. Mehsana

For hearing and disposal in accordance with law.

Dt.3.5.2002.

Sd/- illegible

Sessions Judge,

Mehsana.

ORDER BELOW EXH. 1 IN Criminal Misc. Application No. 611/2002

1. The applicants/accused herein have filed this Regular Bail Application in connection with Vijapur Police Station I CR No. 46 of 2002 for the offense under section 147, 148, 149, 302, 322,324, 325, 337, 436 of the Indian Penal Code and section 307, 397, 120(B) of the Indian Penal Code and section 135 of the Bombay Police Act.

2. The facts of the prosecution in this matter are to the effect that the complainant Shaikh Ibrahimbhai Rasulbhai lodged complaint on 2.3.2002 alleging that on 1.3.2002, there was a call for Bharat Bandh which call was in connection with Godhra Incident. The complainant further alleged that in view of the call for Bandh, they were at home. At that time, at about 11.30 hours at night, the Patels of their village caused damage to their cabins, Gallas, threw stones and put them to fire and the crowd of about one thousand Patels had come to their house pelting stones armed with sticks, Dhariyas, Dhokas and other weapons wherein, in view of the hue and cry. Within some time, police van had also reached within some short span and for removing the crowd, the police was compelled to resort to firing. Consequently, the persons of the crowd had gone away and thereafter, within some time, crowd of Patels had gathered and they were putting fire to the buildings etc. Persons of the said crowd were putting fire by means of petrol, kerosene and were also pelting stones. Complainant further alleged that as the members of the crowd were huge in number, they feared and had gone back. In the light, he had identified the persons of the said crowd wherein following persons were there.

- (1) Patel Ambaram Maganlal;
- (2) Rajeshkumar Punjabhai Patel

- (3) Patel Chaturbhai Ramabhai
- (4) Patel Rameshbhai Kantilal
- (5) Patel Jagabhai Devabhai
- (6) Patel Baldevbhai Ranchhodbhai
- (7) Patel Rameshbhai Gangaram.
- (8) Patel Sureshbhai Baldevbhai.
- (9) Patel Chaturbhai Vithalbhai
- (10) Patel Rajeshbhai Karshanbhai
- (11) Patel Madhabhai Vithalbhai
- (12) Patel Rameshbhai Prabhhabhai
- (13) Patel Bhikhabhai Joitabhai
- (14) Patel Bakabhai Mangalbhai
- (15) Patel Kalabhai Naghabhai
- (16) Patel Rameshbhai Kantibhai
- (17) Patel ... Baldevbhai
- (18) Patel Pashabhai Mohanbhai
- (19) Patel Tulsibhai Gordhanbhai
- (20) Patel Prahladbhai Jagabhai
- (21) Patel Aswinbhai Jagabhai
- (22) Patel Sureshbhai Ranchhodbhai
- (23) Patel Ramanbhai Jivanlal
- (24) Patel Jayantibhai Ambalal
- (25) Patel Jayantibhai Jivanlal
- (26) Patel Vishnubhai Prahladbhai
- (27) Patel Dashrathbhai Ambalal
- (28) Patel Rameshbhai Rambhai.

All the said persons were stone pelting on the houses of the complainant. The complainant has alleged further that his family had received stone injuries wherein the complainant received stone injury on his head and left hand, back The complainant further alleged that as the house of his brother Mahmudmiya Hushenmiya was a pakka

house, for the sake of safety, the female members of his house, children and male members had gone in his house and he himself had remained present in his own house. The Complainant has further alleged that all the aforesaid accused persons and the persons of the crowd had caused damage to his residential house and then put fire to it and after some time the persons who were rioting had gone away. The complainant has further alleged that when he had gone to the house of his son in law, he had seen that the persons who had taken shelter therein were put to fire by the persons of the crowd. In his complaint, the complainant has given the names of those persons who have been put to fire and whose death committed by the persons of this crowd. Details in that regard have been given in the complaint wherein in all 29 persons have died due to their having been put to fire and 17 persons have received injuries because of the burns and in view of the stone pelting.

3. 25 persons from amongst the persons named as accused in the said matter in FIR have filed the present Regular Bail Application under section 439 of the Code of Criminal Procedure.

4. Heard the learned advocate Shri R.R.Shukla for the applicants/accused persons and Shri D.R. Trivedi, learned Public Prosecutor for the State.

5. In his arguments, it has been submitted by the learned advocate Mr.Shukla for the applicants accused that the incident had taken place from 11.30 hours of the night till 2.00 a.m. And in such circumstances, it cannot be believed that the complainant or any witness has identified any of the applicants/accused persons. In his arguments, learned advocate Shri Shukla has also submitted that the street light in the village was off and in such circumstances, it cannot be believed that the complainant or another witness has identified the applicants/accused persons. Looking to the police papers in this matter, in the police papers, statement of village talati has been recorded and in his statement, it has been submitted by him that since last two three months, due to the non payment of the light bill, streetlight was disconnected. Certificate of the Sardarpur Gram Panchayat Talati is produced at mark 6/1. Thus, from the facts of the certificate of the talati at mark

6/1, it is clearly established that in the village, street light were off at the time of incident and the incident has taken place during the night hours.

6. While arguing on behalf of the applicants accused in this matter, learned advocate Shri Shukla submitted that as per the facts of the complainant's complaint, crowd of one thousand persons had come at about 11.00 hours of the night and was putting fire to the gallas cabins in the village and at that time, in view of the arrival of the police, and since the police had fired, the persons of the crowd had gone away. Learned advocate Mr. Shukla further submits that the complaint was filed in the morning after the first incident wherein the fact is not appearing as to who were the persons in the crowd. Learned advocate Mr. Shukla further submits that if the police had come and had fired and then the crowd had gone away, then, the complainant or the other witnesses were in a position to inform the police as to who were the persons in the crowd. No such incident has taken place in the village. Learned advocate Shri Shukla further submits that the names of the present applicants accused have been subsequently falsely added. Applicant accused persons are the residents of village Sardarpur and in such circumstances, it cannot be believed that the complainant is knowing these applicants accused and in such circumstances, there is a false implication of the applicants accused persons in the matter. Learned advocate Mr. Shukla has further submitted that if the complaint is perused, then, fact is appearing that the persons who have died were in the pakka house of the son in law of the complainant Mahemudmiya wherein they had allegedly gone for taking shelter. Learned advocate Mr. Shukla has further submitted that looking to the complaint of the complainant, nowhere it is alleged that there was stone pelting on the house of Maheubmiya or that the house was put to fire and who were the persons putting the fire to the said house. No such facts are appearing in the complaint. Looking to the complaint of the complainant herein, nowhere it has been mentioned as to which accused persons had attacked on the persons taking shelter in the house of Mahemudmiya and what were the arms with the persons of such crowd. Such facts have not been stated in the FIR. Learned advocate Shri Shukla has submitted further that after the complaint of the complainant, in the statements of the witnesses, false facts have been stated for implicating the applicants accused persons and thereby, a false attempt has been made.

Learned advocate Mr.Shukla has further submitted that as per the complaint,it was the crowd of one thousand persons who was shouting and at that time,it is not possible that any Mohammedan Person had come out and it is also not possible that the door/windows of the house were kept open and in such circumstances, it is difficult to believe that the witness has identified the applicant accused persons but the witnesses are of village Sardarpur and the applicants are also of village Sardarpur and, therefore, an attempt has been made to falsely implicate the applicants as accused by giving their names in the statements.

7. During the course of his arguments,learned advocate Mr.Shukla has placed reliance on the decision in 1990 (3) Crimes Page 423 in case of Dilavar Hushenand others versus State of Gujarat and others which is the decision of the apex court in connection with the incident of Dabgarwad of Ahmedabad. In the said decision, the apex court held that there was terror in the incident and in such circumstances, attempt made by the witnesses to have look at the nature of incident cannot be believed. It also does not appear as to from which place the witness witnessed the incident. Said decision cited by the learned advocate Mr.Shukla is the decision of the Hon'ble Supreme Court given after completion of whole trial and in the appeal proceedings. Learned advocate submits that the principles laid down therein should be taken into consideration.

8. As discussed hereinabove, the complainant has not made any mention in his complaint as to with which weapon the applicant accused were armed and which part was paid by a particular accused. Immediately thereafter i.e. on 2.3.2002 and 3.3.2002, statements of certain witnesses were recorded. Amongst these, on 2.3.2002, witness Ashikhushen had given statement and in his statement, it was stated by him that he was seeing by hiding himself but while he was hidden, from which place, he was seeing, that fact has not been disclosed by him in his statement Looking to that, when there is such a dangerous situation and in such a circumstances, if Ashikhushen is seeing while hiding himself, and while seeing in that manner, he identified 25 to 30 persons, it is difficult to believe the same.

9. On 3.3.2002, Sabirhushen Imamsha, Sahrabanu, daughter of Shabirhushen and Sharifabanu's statements have been recorded and they are stating that the persons were identified in the moon light. It is difficult to identify persons forming part of crowd of one thousand persons and it is also difficult to identify on the basis of the voice.

Similarly, statement of Sabirhushen Imamsha was recorded on 3.3.2002. He states in his statement that by hiding at some distance, he had seen that Patel Ambalal Maganlal armed with Dhariya, Kanubhai Karshanbhai Patel was armed with stones, Jivanbhai Dwarkabhai Patel was armed with iron pipe, Rameshbhai Ramabhai Patel was armed with Dhariyu, Prajapati Ravikumar Amrutlal, Rohitkumar Ramanlal Prajapati and Bharatbhai Rameshbhai Prajapati were having stones with them and names of other persons have also been disclosed but they were seen from some distance i.e. from which place and how he had hidden himself and how he see, nothing has been disclosed in that regard. Thus, in the darkness of night when one has hidden himself in the state of danger and yet the witnesses have identified the accused persons, same would require appreciation of the person so identifying.

10. On 2.3.2002, statement of the witness Mohamad Satar Bachumiya has been recorded. He hidden himself in the house by making off the lights of his house and saw some persons. Names of the persons identified have been given in the statement but it is difficult to believe that one hiding himself in the house would see out side from the window. It is the case of the prosecution that the persons from the crowd were throwing stones, burning kakkdas/clothes and at that time also, he was seeing from the window which is difficult to believe.

11. Witness Farjabanu, daughter of Bachumiya submits that for her safety, she was going from one house to another house and at that time, she had identified some persons but when one person is running for saving himself, then, it is difficult that he would identify the persons of the crowd. Witness Faridabibi submits that she identified some persons on the basis of the voice which too is very difficult to believe.

12. Thus, after the incident, on 2.3.2002 and 3.3.2002, statements have been recorded. IN that regard, if they have identified the present applicants/accused, then, same is requiring prima facie consideration. If the police papers are perused, then, on date 2.3.2002 and 3.3.2002, statements of other persons have been recorded. Looking to that, it appears that an attempt has been made to make inclusion of other different persons and the same is altering the case of the prosecution.

13. This incident had taken place at village Sardarpur which is very much unfortunate; serious matter with which fact, even Mr. Shukla is also agreeing. However, in his arguments, he submits that the applicants/accused have a right of liberty; the applicants/accused have been falsely implicated. In such circumstances, he is praying for release of the applicants accused on bail.

14. If the whole facts are viewed in this matter, then, it would appear that the complainant has disclosed nothing in his complaint as to which person was armed with weapon and with which weapon a particular person was armed. Further, the complainant has not disclosed any fact as to how attack was made on the pakka house of the son in law of the complainant namely Mahemudmiya. The complaint of the complainant is absolutely silent about the (manner in which) attack made on the house of Mahebumiya. In this matter, incident had taken place during the night hours. Street light in the village was also off. There is no mention of the place where the witnesses were hidden who are claiming to have identified the persons. It is difficult to believe that the persons have been identified on the basis of the voice. It is also difficult to believe that they have identified to believe that the persons have been identified in the moon light and when there is a danger of receiving injury, stones are being thrown, burning clothes are being thrown, at that time, it is also difficult that one would keep the window open.

15. The viewing the facts as a whole, it appears to be more proper and just to release the present accused applicants on bail. Two months have gone after the incident. The applicants accused persons are in jail since two months. At village Sardarpur, no incident has again taken place. In Vijapur Taluka also, no such incident has taken place

again. Considering the facts and circumstances of the case, it appears to be proper and just to grant the regular bail of the applicants accused persons. Therefore, following order is passed.

Order

Regular Bail Application of the applicants accused is allowed.

All the applicants accused are ordered to be released on regular bail in the sum of Rs.10,000.00 (Rupees Ten Thousand Only) and the Personal Bond of the like amount each subject to the following conditions in connection with Vijapur Police Station I CR No. 46 of 2002 for the offense under section 147, 148, 149, 302, 322, 324, 325, 337, 436 of the Indian Penal Code and section 307, 397, 120(B) of the Indian Penal Code and section 135 of the Bombay Police Act.

Conditions :

- (1) The applicants shall not give threats to the witnesses for the prosecution.
- (2) The applicants accused shall not enter village Sardarpur.
- (3) The applicants accused shall regularly get marked their presence at Vijapur Police Station on 10th, 20th and 30th of every English Calender.
- (4) The applicants accused shall furnish their residential addresses before the Investigating Officer.
- (5) The applicants accused shall not leave the limits of the State of Gujarat without prior permission of this Court.

(6) The applicants accused shall surrender their passport if any before the Investigating Officer and if they are not having the passport, writing to that effect should be given to that effect before the Investigating Officer.

The order is read over and pronounced in the open Court today, this 10th May, 2002

Dated 10.5.2002
Mehsana

Sd/-Illegible
(DR Shah)
Additional Sessions Judge,
Mehsana.

True Translation 116

Criminal Misc. Application No. 830 of 2002

In the Court of the Hon'ble Sessions Judge Saheb, Mehsana at Mehsana.

- (1) Patel Jayantibhai Ambalal
Aged 43 years, Occu : Service,
(GEB, Unjha)
- (2) Prajapati Rameshbhai Ganeshbhai,
Aged 51 years, Occu : Service,
(GEB Vijapur)
- (3) Patel Jivanbhai Dwarkadas

Aged 42 years, Occu : Service,
(Government Dispensary, Vijapur)

- (4) Patel Rameshbhai Baldevbhai,
Aged 37 years, Occu : Agriculture.
- (5) Patel Kanubhai Joitaram,
Aged 43 years, Occu : Agriculture.
- (6) Patel Dahyabhai Kachrabhai,
Aged 36 years, Occu : Agriculture.
- (7) Patel Mathurbhai Trikambhai,
Aged Adult, Occu : Service.
- (8) Ashutosh alias Pavan Murlidhar Damara
Aged 21 years, Occu : Business,
All residing at Sardarpur,
Taluka Vijapur,
Dist : Mehsana.....Applicants.

Versus

The State of Gujarat.....Respondent.

Re : Bail Application as per Section 439 of the Code of Criminal Procedure.

7

On behalf of the applicants, it is most respectfully submitted that;

We, the applicants have been charged with the offense registered with Vijapur Police Station at I CR No. 46 of 2002 for the offense under section 147, 148, 149, 302, 322,324, 325, 337, 436 of the Indian Penal Code and section 307, 397, 120(B) of the Indian Penal Code and section 135 of the Bombay Police Act.

In this matter, applicants no. 1,2,3,7,8 had preferred anticipatory bail application being Criminal Miscellaneous Application No. 808 of 2002 as per section 438 of the Code of Criminal Procedure which application was considered by the Additional Sessions Judge at Mehsana Shri D.R. Shah and the same was rejected on 10.6.2002. Thereafter, the applicants were arrested by the Vijapur and on production of the applicants before the Judicial Magistrate, First Class, Vijapur, they were sent for judicial custody and, therefore, present application has been filed for bail on the following amongst other grounds.

(1) We the applicants have not committed any offense. The applicants are unaware about the said alleged offense.

(2) Co-accused herein were arrested by the police. As they were in jail, they had preferred Criminal Miscellaneous Application No. 611 of 2002; 576 of 2002; 532 of 2002; 537 of 2002; 57 of 2002 for bail which applications for bail were heard and decided by the Additional Sessions Judge at Mehsana Shri D.R. Shah and the same were allowed and all of them were ordered to be released on bail.

(3) We, the applicants No.1,2,3,7,8 are service class persons and if we are not released on bail in connection with the said offense, then, we are likely to suffer irreparable loss which cannot be compensated in terms of money.

(4) We the applicants no.1,2,7 are the employees of the GE Board and applicant no.3 is doing service in the Government Dispensary and we are the Government employees and applicant no.2 is the Meter Inspector in the office of the GEB at Vijapur and on the day of incident, he was available in the marriage occasion in his in-law's house. Applicant NO. 2 Jayantibhai was performing duties as Meter Reader at GEB Unjha. At the time of incident, applicant no.7 was performing duties in the GEB. Applicant NO.3 was performing duties in the Government Dispensary at Vijapur and applicant No. 5 was sick. Applicants though were not present at village Sardarpur at the time of incident, they have been falsely implicated.

(5) Investigation in this case has been over and no statements of the witnesses have to be recorded now and the complainant and the witnesses were not present at the time of incident and yet they have shown false presence on the scene of offense and at the time of incident, in view of the non payment of the street light bill, electric connection was disconnected. Though there was darkness in the village, prosecution is said to have identified the crowd and persons in the crowd in the light of electricity which is a fact fabricated by the prosecution.

(6) Said so called incident has taken place as a counter blast of Godhra Incident dated 27.2.2002 and because of which reason, we the applicants accused have been falsely implicated in the incident. No offense of any nature has been registered against the applicants nor are we likely to abscond or destroy the evidence.

(7) We the applicants are having movable and immovable properties at village Sardarpur, Taluka Vijapur, District Mehsana and, are residing at the aforesaid address and, therefore, there is no any likelihood of our absconding or jumping the bail.

(8) We, the applicants are the Government employees and if we are not released on bail, then, our service is likely to be affected which cannot be compensated in any manner whatsoever and we, the applicants have not played any part in the so called incident in any manner whatsoever.

(9) We the applicants are ready and willing to abide by the terms and conditions imposed by this Hon'ble Court and are ready and willing to give the proper guarantor of the amount as may be ordered by this Hon'ble Court.

(10) Further facts will be disclosed at the time of hearing.

(11) Therefore, it is prayed that;

Be pleased to release us, the applicants, after considering all the aforesaid facts and grounds on bail on proper amount in connection with Vijapur Police Station I CR No. 46 of 2002 for the offense under section 147, 148, 149, 302, 322,324, 325, 337, 436 of the Indian Penal Code and section 307, 397, 120(B) of the Indian Penal Code and section 135 of the Bombay Police Act.

Dt/13/7/2002

Mehsana

Sd/-Illegible

Advocate for the applicants.

True Translation 121

ORDER BELOW EXH. 1 IN Criminal Misc. Application No. 860 OF 2002

1. The applicants/accused herein have filed this Regular Bail Application in connection with Vijapur Police Station I CR No. 46 of 2002 for the offense under section 147, 148, 149, 302, 322,324, 325, 337, 436 of the Indian Penal Code and section 307, 397, 120(B) of the Indian Penal Code and section 135 of the Bombay Police Act.

2. The facts of the prosecution in this matter are to the effect that the complainant Shaikh Ibrahimhai Rasulbhai lodged complaint on 2.3.2002 alleging that on 1.3.2002, there was Call for Bharat Bandh which call was in connection with Godhra Incident. The complainant further alleged that in view of the Call for Bandh, they were at

home. At that time, at about 11.30 hours of the night, Patels of their village caused damage to their cabins, Gallas, threw stones and put them to fire and the crowd of about one thousand Patels had come to their house pelting stones armed with sticks, Dhariyas, Dhokas and other weapons wherein, in view of the hue and cry, within some time, police van had also reached within some short span and for removing the crowd, the police was compelled to resort to firing. Consequently, the persons of the crowd had gone away and thereafter, within some time, crowd of Patels had gathered and they were putting fire to the buildings etc. Persons of the said crowd were putting fire by means of petrol, kerosene and were making stone pelting. Complainant further alleged that as the members of the crowd were more, they feared and had gone back and in light, he had identified the persons of the said crowd namely (1) Patel Ambaram Maganlal; (2) Rajeshkumar Punjabhai Patel etc. 28 persons' name have been disclosed in the complaint. All the said persons were making stone pelting on the houses of the complainant. The complainant has alleged further that his family had received stone injuries wherein the complainant received stone injury on his head and left hand, back The complainant further alleged that as the house of his brother Mahmudmiya Hushenmiya was pakka house, for the sake of safety, the female members of his house, children and male members had gone in his house and he himself had remained present in his own house. The Complainant has further alleged that all the aforesaid accused persons and the persons of the crowd had caused damage of his residential house and then put fire to it and after some time the persons who were rioting had gone away. The complainant has further alleged that when he had gone at the house of his son in law, he had seen that the persons who had taken shelter therein were put to fire by the persons of the crowd. In his complaint, the complainant has given the names of those persons who have been put to fire and whose death committed by the persons of this crowd. Details in that regard have been given in the complaint. In his complaint, the complainant has stated that in this incident, the names of the injured persons in this incident are Ikbalmiya Rasulmiya, Filjubmiya Hushenmiya, Mustumiya Rasulmiya, Najiramiya Akbarmiya, Gulabali Akbarmiya and Faridabibi Afikmiya, Bashirbibi Bachumiya and Rukshana and Aminabibi etc. 15 to 17 persons have received injuries and the dead bodies of the dead persons were sent at the Government Hospital Complainant has further

submitted that on 1.3.2002 at 11.30 night till 2.30 hours of the night of 2.3.2002, by making stone pelting, houses, shops, vehicles and the persons have been put to fire for which detailed complaint has been filed.

3. Heard the learned advocate Shri CS Rajput for the applicants and Shri D.R. Trivedi, learned Public Prosecutor for the State.

4. In this matter, looking to the complaint and the police papers, fact is appearing that the name of present applicant No.1 Patel Jayantibhai Ambalal is there in the FIR and except him, present seven applicants' names are not there in the FIR.

5. Looking to the police papers in this matter, in the police papers, statement of village talati has been recorded and in his statement, it has been submitted by him that since last two three months, due to the non payment of the light bill, streetlight was disconnected at the time of incident and the incident has taken place during the night hours. Therefore, advocate for the applicants accused Shri C.S.Rajput submits that at the time of incident, there was darkness. Complainant and the witnesses are in the fearful position; making attempts to hide themselves and in such circumstances, it cannot be believed that the complainant or the other witnesses have identified the present applicants accused. Shri Rajput has cited the decision in Dilavar Hushen and others versus State of Gujarat and others reported in 1990 (3) Crimes page no.423 which is the decision of the apex court in connection with the incident of Dabgarwad of Ahmedabad. In the said decision, the apex court held that there was terror in the incident and in such circumstances, attempt made by the witnesses to have look at the nature of incident cannot be believed. It also does not appear as to from which place the witness witnessed the incident. Said decision cited by the learned advocate Mr. Rajput is the decision of the Hon'ble Supreme Court given after completion of whole trial and in the appeal proceedings. Learned advocate Shri Rajput submits that the principles laid down therein should be taken into consideration as the incident took place at the night hours; street lights were off and in view of the danger, complainant and the witnesses were attempting

to hide themselves and in such circumstances, it is not believable that the complainant and the witnesses identified the present applicants/accused persons.

6. In this matter, looking to the facts of the complaint, then, it would appear that the complainant has disclosed nothing in his complaint as to which person was armed with weapon and with which weapon a particular person was armed. Further, the complainant has not disclosed any fact as to how attack was made on the pakka house of the son in law of the complainant namely Mahemudmiya. The complaint of the complainant is absolutely silent about the (manner in which) attack made on the house of Mahebumiya. In this matter, within 2/3 days, statements of the witnesses have been recorded wherein Ferozbanu, daughter of Bachumiya submits that for saving herself, she was going from one house to another house. At that time, certain persons were identified but when a person is running for saving himself, it is difficult to believe that he would identify the persons of the crowd. Faridabibi Bachumiya submits that some persons were identified on the basis of the voice and when there is hue and cry, it is difficult to identify voice of any person. If the statement of Satar Bachumiya is perused which is dated 2.3.2002, then, it would appear that he hide himself in the house making light off and from window he had seen certain persons but when the light in the house is off and street light out side is also off, then, it is prima facie suspicious that he would identify the persons accused applicants.

7. Looking to the police papers, statements have been recorded from 6.3.2002 to 10.3.2002 wherein an attempt has been made to show that the other persons were present at the time of incident. Amongst the present applicants, name of the applicant no.1 is there in the FIR whereas the names of the remaining applicants are not there in the FIR. Names of the remaining applicants/accused are appearing from the statements of the witnesses from 6.3.2002 and subsequent statements which statements are also recorded after 1-6 days from the date of incident and different witnesses have made attempt to implicate different persons which is appearing.

8. Amongst the present applicants/accused persons, except the name of the applicant no.1, names of other witnesses are being disclosed in the statements dated 6.3.2002 and subsequent to that. Looking to the police papers, name of the applicant no.1 Jayantibhai Ambalal is disclosed by the complaint. Thereafter, up to 5.3.2002, no witness disclosed his name. On 6.3.2002, Sabir Hushen Imamsha states the name of applicant no.1 and submits that at the time of incident, applicant no.1 was armed with stick. Thereafter, witness Akbarmiya also states that applicant no.1 was armed with stick. Looking to this fact, in the initial statements recorded within 4/5 days, except the complainant, no witness is disclosing the name of the applicant no.1. Complainant has also not disclosed as to with which weapon the applicant no. 1 was armed. Whereas the names of the other witnesses are not there in the FIR but have been gradually disclosed in the statements of the witnesses and one by one, witnesses have added names of the accused. Thus, considering the facts and circumstances of the case, it appears to be proper and just to grant the regular bail of the applicants accused persons. Therefore, following order is passed.

Order

Criminal Misc. Application NO. 860 of 2002 is allowed.

All the applicants accused are ordered to be released on regular bail in the sum of Rs.10,000.00 (Rupees Ten Thousand Only) and the Personal Bond of the like amount each subject to the following conditions in connection with Vijapur Police Station I CR No. 46 of 2002 for the offense under section 147, 148, 149, 302, 322, 324, 325, 337, 436 of the Indian Penal Code and section 307, 397, 120(B) of the Indian Penal Code and section 135 of the Bombay Police Act.

Conditions :

(1) The applicants / accused shall remain present as and when the investigating officer call them in the matter of investigation and shall cooperate in investigation.

(2) The applicants shall not give threats to the witnesses for the prosecution.

(3) The applicants accused shall not enter village Sardarpur.

(4) The applicants accused shall regularly get marked their presence at Vijapur Police Station on 10th, 20th and 30th of every English Calender.

(5) The applicants accused shall furnish their residential addresses before the Investigating Officer.

(6) The applicants accused shall not leave the limits of the State of Gujarat without prior permission of this Court.

(7) The applicants accused shall surrender their passport if any before the Investigating Officer and if they are not having the passport, writing to that effect should be given to that effect before the Investigating Officer.

The order is read over and pronounced in the open Court today, this 10th May, 2002

Dated 10.5.2002

Mehsana

Judge,

Sd/-Illegible

(DR Shah)

Additional Sessions

Mehsana.

Criminal Misc. Application No. 927 of 2002

In the Court of the Hon'ble Sessions Judge Saheb, Mehsana at Mehsana.

Patel Ashwinkumar Baldevbhai,
Aged 30 years, Occu : Agriculture,
Residing at Sardarpur,
Taluka Vijapur,
Dist : Mehsana.....Applicant.

Versus

The State of Gujarat.....Respondent.

Re : Bail Application as per Section 439 of the Code of Criminal Procedure.

On behalf of the applicants, it is most respectfully submitted that;

We, the applicants have been charged with the offense registered with Vijapur Police Station at I CR No. 46 of 2002 for the offense under section 147, 148, 149, 302, 322,324, 325, 337, 436 of the Indian Penal Code and section 307, 397, 120(B) of the Indian Penal Code and section 135 of the Bombay Police Act. and the applicants were arrested by the Vijapur and on production of the applicants before the Judicial Magistrate,First Class, Vijapur, they were sent for judicial custody and, therefore, present application has been filed for bail on the following amongst other grounds.

(1) We the applicants have not committed any offense. The applicants are unaware about the said alleged offense.

(2) SO called incident took place on 1.3.2002 as alleged in the said complaint. Compliant in that regard was registered on 2.3.2002 at 11.30 hours of the noon and nowhere in the said complaint, name of the applicant has been disclosed and evasively it has been alleged that the crowd of about 1000 persons attacked armed with sticks, stones, Dhariyas and put fire to the houses and shops of the Mohammedans for which complaint has been registered.

(3) In this matter, Criminal Miscellaneous Application No. 611 of 2002; 576 of 2002; 532 of 2002; 537 of 2002; 57 of 2002 for bail which applications for bail were heard and decided and were allowed and all of them were ordered to be released on bail.

(4) Investigation in this case has been over and there is no likelihood of the applicants preventing the applicants from giving statements or deposition.

(5) We the applicants are having movable and immovable properties at village Sardarpur, Taluka Vijapur, District Mehsana and, are residing at the aforesaid address and, therefore, there is no any likelihood of our absconding or jumping the bail.

(6) I, the applicant has not played any role directly or indirectly and though there is no evidence available against the applicant, Said so called incident has taken place as a counter blast of Godhra Incident dated 27.2.2002 and because of which reason, I have been falsely implicated in the incident in reference to the incident wherein name of the applicant is not disclosed any place and I have been arrested only with a view to harrass me.

(7) I, the applicant is an agriculturist. Presently, season of agriculture is going on. If the applicant is not released on bail, then, our agricultural crop is likely to be damaged which cannot be compensated in terms of money.

(8) If the applicant is released on bail, the prosecution is not likely to suffer any loss but if the applicant is not released on bail, then, the applicant is certainly going to suffer irreparable loss.

(9) In this matter, investigation has practically been over. Question of inducing or threatening the prosecution witnesses is not arising. IN this matter, earlier, the Court has released many accused persons on bail and after their release on bail, no incident has taken place and, therefore,if we are released on bail, then, complainant is not likely to be prejudiced.

(10) Further facts will be disclosed at the time of hearing.

(11) Therefore, it is prayed that;

Be pleased to release us, the applicants, after considering all the aforesaid facts and grounds on bail on proper amount in connection with Vijapur Police Station I CR No. 46 of 2002.

Dt/26.6.2002

Mehsana

applicants.

Sd/-Illegible

Advocate for the

ORDER BELOW EXH. 1 IN Criminal Misc. Application No. 927 OF 2002

1. The applicants/accused herein have filed this Regular Bail Application in connection with Vijapur Police Station I CR No. 46 of 2002 for the offense under section 147, 148, 149, 302, 322,324, 325, 337, 436 of the Indian Penal Code and section 307, 397, 120(B) of the Indian Penal Code and section 135 of the Bombay Police Act.

2. The facts of the prosecution in this matter are to the effect that the complainant Shaikh Ibrahimhai Rasulbhai lodged complaint on 2.3.2002 alleging that on 1.3.2002, there was Call for Bharat Bandh which call was in connection with Godhra Incident. The complainant further alleged that in view of the Call for Bandh, they were at home. At that time, at about 11.30 hours of the night, Patels of their village caused damage to their cabins, Gallas, threw stones and put them to fire and the crowd of about one thousand Patels had come to their house pelting stones armed with sticks, Dhariyas, Dhokas and other weapons wherein, in view of the hue and cry, within some time, police van had also reached within some short span and for removing the crowd, the police was

compelled to resort to firing. Consequently, the persons of the crowd had gone away and thereafter, within some time, crowd of Patels had gathered and they were putting fire to the buildings etc. Persons of the said crowd were putting fire by means of petrol, kerosene and were making stone pelting. Complainant further alleged that as the members of the crowd were more, they feared and had gone back and in light, he had identified the persons of the said crowd namely (1) Patel Ambaram Maganlal; (2) Rajeshkumar Punjabhai Patel etc. 28 persons' name have been disclosed in the complaint. All the said persons were making stone pelting on the houses of the complainant. The complainant has alleged further that his family had received stone injuries wherein the complainant received stone injury on his head and left hand, back. The complainant further alleged that as the house of his brother Mahmudmiya Hushenmiya was pakka house, for the sake of safety, the female members of his house, children and male members had gone in his house and he himself had remained present in his own house. The Complainant has further alleged that all the aforesaid accused persons and the persons of the crowd had caused damage of his residential house and then put fire to it and after some time the persons who were rioting had gone away. The complainant has further alleged that when he had gone at the house of his son in law, he had seen that the persons who had taken shelter therein were put to fire by the persons of the crowd. In his complaint, the complainant has given the names of those persons who have been put to fire and whose death committed by the persons of this crowd. Details in that regard have been given in the complaint. In his complaint, the complainant has stated that in this incident, the names of the injured persons in this incident are Ikbalmiya Rasulmiya, Filjubmiya Hushenmiya, Mustumiya Rasulmiya, Najiramiya Akbarmiya, Gulabali Akbarmiya and Faridabibi Afikmiya, Bashirbibi Bachumiya and Rukshana and Aminabibi etc. 15 to 17 persons have received injuries and the dead bodies of the dead persons were sent at the Government Hospital. Complainant has further submitted that on 1.3.2002 at 11.30 night till 2.30 hours of the night of 2.3.2002, by making stone pelting, houses, shops, vehicles and the persons have been put to fire for which detailed complaint has been filed.

3. In this matter, in his arguments, advocate for the applicant accused Shri CS Rajput has argued that they identified in light but at the time of incident in village Sardarpur, there was no any light. Fact that there was no any light at Sardarpur at that time is appearing from the police papers. statement of village talati has been recorded and in his statement, it has been submitted by him that since last two three months, due to the non payment of the light bill, streetlight was disconnected at the time of incident and the incident has taken place during the night hours. Therefore, advocate for the applicants accused Shri C.S.Rajput submits that at the time of incident, there was darkness. Complainant has yet given names. In this matter, looking to the police papers, it is clearly appearing that in the village, since last 2/3 months, there was no light in the street. In the matter, looking to the complaint of the complainant, the complainant has disclosed names of 28 persons but what was the weapon with a particular persons, how attacked, nothing has been mentioned in that regard. As per the complaint of the complainant, in the house of Mohamadmiya, all the Mohmedans had hidden themselves. and there, 28/29 Muslims died and 17/18 Muslims received burn injury but the complainant has not specifically disclosed any fact in the complaint as to who attacked on the house of his son in law Mohamadmiya, what was done there and how the attack was made. In this matter, witness Ashik Husen submits that the accused was having tin with him whereas looking to the statement of witness Faridaben, Faridaben submits that the accused Ashwin was identified on the basis of his voice. Thus, it is difficult to believe that the applicant Ashwin is identified from amongst the crowd of one thousand persons only on the basis of the voice.

4. The incident took place at night hours when there was darkness in the village. Further, at that time, complainant and other witnesses were in fearful and their main object was to secure their safety and defence and yet if they have identified the present applicant/accused, then, same would require appreciation. In her statement, witness Sarifabibi states that she heard from the window that our village Patel Ramanbhai Ganeshbhai and Pasabhai Mohanbhai and Ashwinbhai Baldevbhai were saying that 'Sala Muslims' have burnt Hindus in Godhra, let petrol, kerosene be poured on them through windows of their house. After saying so, from the window, it was thrown and burning

clothes were thrown in the house. However, it is a question as to whether window was kept open in such a situation and it is like impossible that from window, he was identified. When the crowd is big, there is hue and cry, it is very difficult to identify only 3/4 persons by name. Thus, looking at the incident as a whole, when the incident took place at night when street lights were off; complainant and the witnesses were facing serious situation and in such situation, whether the present applicant was identified by the complainant and witnesses is also a question which could be determined after recording of the evidence. However, considering the facts and circumstances of the case, it appears to be proper and just to grant the regular bail of the applicants accused persons. Therefore, following order is passed.

Order

Criminal Misc. Application NO. 927 of 2002 is allowed.

All the applicants accused are ordered to be released on regular bail in the sum of Rs.10,000.00 (Rupees Ten Thousand Only) and the Personal Bond of the like amount each subject to the following conditions in connection with Vijapur Police Station I CR No. 46 of 2002 for the offense under section 147, 148, 149, 302, 322, 324, 325, 337, 436 of the Indian Penal Code and section 307, 397, 120(B) of the Indian Penal Code and section 135 of the Bombay Police Act.

Conditions :

(1) The applicants accused shall regularly get marked their presence at Vijapur Police Station on 10th, 20th and 30th of every English Calender.

(2) The applicants accused shall not enter village Sardarpur.

(3) The applicants shall supply his residential address to the IO.

(4) The applicants accused shall not leave the limits of the State of Gujarat without prior permission of this Court.

(7) The applicants accused shall surrender their passport if any before the Investigating Officer.

The order is read over and pronounced in the open Court today, this 2nd July, 2002.

Dated 2.7.2002.

Mehsana

Sd/-Illegible

(DR Shah)

Additional Sessions

Judge,

Mehsana.

Annexure 2

To,

Police Inspector,

Vijapur Police Station.

Subject:- Regarding false surrounding and usurping the amount of house tax.

Applicants: 1) Shaikh Sabir Husen Kadarmiya Res. Sardarpur.

2) Shaikh Mohammed Sattar Bachumiyan do

3) Shaikh Gulam Ali Akbar Miyan do

4) Shaikh Aiyubmiyan Rasulmiyan do

5) Shaikh Jakirmiyan Kadarmiyan do

6)Shaikh Safikmiyan Babumiyan do

7)Shaikh Maqbulmiyan Kesharmiyan do

8)Shaikh Sikandarmiyan Rasulmiyan do

Versus.

Accused 1) Patel Kachrabhai Tribhovandas (Sarpanch) Res. Sardarpur.

2) Patel Ambalal Maganlal (Kapoor) Res. Do

3) Patel Becharbhai Odhavbhai Do

4) Prajapati Revabhai Master Do

5) Patel Sureshbhai (Tiniyo) Ranchodbhai Do

6) Patel Girishkumar Jivanlal Do

We the applicants by filing this complaint state before you that we are main eye witnesses and affected persons of massacre took place at Sardarpur village, the Crime Register of which case is bearing Vijapur Police Station C.R. No. 46/2002.

2) Out of accused of this application, the accused No.1 is the accused of this massacre and at present he is continued as Sarpanch. The accused Nos. 2,5 are also accused of massacre. The accused No.3 is a servant of Panchayat. The son of accused No.4 named Gordhanbhai is an accused of this massacre and two brothers of accused no.6 named Maheshbhai Jivanbhai and Ramanbhai Jivanbhai are also accused of this massacre. The case no.46/2002 of this massacre is at present pending in Supreme Court.

3) In this case the fact is that after occurrence of massacre we applicants have not gone at village for residing there due to fear from last two years after massacre took place. As our houses and house hold articles are burnt by accused of massacre, and as we had to take burnt tile sheets of our houses at village, as we made demand of police bandhobust from

Himmatnagar Town Police station on dated 30.3.2004, 1) constable Dhanjibhai Kachrabhai 2) Indrasinh Vajusinh 3) Bipinkumar Ratnaji of Himmatnagar Town Police station were sent with us so on that day we reached at village at eleven O'clock and we took Bhangariya Imtiyaz of Vijapur with us.

4) While we were taking out tile sheets on our houses at that time, all the accused of the case of complaint rushed in our street and gave threat to us that you cannot take out tile sheets of your houses without paying the taxes of Panchayat. At this time accused Patel Ambalal Maganbhai stated to Sabirmiyan Kadarmiyan one of we applicants as to why you have given my name in complaint, so you get it removed otherwise I will not leave you. The accused No.1 of this complaint who is Sarpanch Patel Kachrabhai Tribhovan he spoke that only after you will pay taxes thereafter we will let you take your goods otherwise we will not let you take away goods from here by saying so he stopped us from taking out our tile sheets, therefore the police came with us also frightened and though they called these accused to go out of street they did not go out and more Patel community people gathered, therefore as we felt fear we consented to pay the amount.

5) Out of we applicants as (Sabirhusen Kadarmiyan) had not an amount of more than Rs.20/- he borrowed an amount of Rs.50/- from policeman Dhanjibhai and he gave the same to accused Kachrabhai Tribhovan to pay the taxes. Out of we applicants the applicant Gulam Ali Akbarmiyan sold two tile sheets for Rs.400/- to the accused Revabhai Prajapati came at said place and gave the amount to accused Kachrabhai to pay the taxes. Out of we applicants Mohammed Sattar borrowed Rs. 318/- from Imtiyazbhai and gave the same to Kachra Tribhovan.

7) Accused Kachrabhai, Sarpanch and Ambalal Maganlal told one of applicant Gulam Ali Akbarmiyani that pay the taxes of Sherumiyani Rasulmiyani also, therefore Gulam Ali told them that all the members of family of my uncle Sherumiyani are killed by you in the massacre, and nobody of his family is alive so how I can pay his taxes so those people told that if you will not pay the taxes of Sherumiyani then keep your goods here and we will not let you take the same, therefore forcibly by giving threat they pressurized us to pay the taxes and Kachrabhai took an amount of Rs.310/- towards taxes from him, and through accused no.3 of this case Kamleshkumar Chanabhai Parmar was called who is doing work of Panchayat, and he came with receipt and he issued receipt in his handwriting as per say of Kachrabhai, the copies of which are given to us, which receipts are bearing Nos. 78, 79, 80, 81, 82 and the xerox copies of the same are enclosed herewith. After recovering amount by using pressure from we applicant, we were permitted to go.

As the above accused and their relatives are accused in the case of Massacre and though we are not residing at village, as we applicants are main witnesses and affected persons of Sardarpur Massacre, by giving threats and by frightening us though there was not tax dues recoverable from us, they have recovered the amount of taxes forcibly from us.

8) The applicant Sabir Husen had cabin of tea at Sardarpur village in the land of ownership of elder brother of father of applicant and the same has been broken and thrown by accused Kachrabhai Tribhovan, and the complaint of which has been sent by applicant to you earlier, and on that place this Sarpanch has illegally constructed the shop of Panchayat. As we are being tortured in this manner, we have sent our

complaint against them. So by arresting the accused it is requested to take proper action.

Date: 16.4.2004

Signature of complainant.

Mehsana.

Copy forwarded to: Sd/- illegible

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1) D.S.P.

Office of D.S.P. mehsana.

NOT INSURED No. 4100

Amount of Stamps affixed Rs. 30 Date stamp

Received a Registered

Round seal of post office

Addressed to : Vijapur

Vijapur police station,

Police Inspector,

Vijapur

Signature of Receiving Officer.