

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER CHARGESHEET) NO. 13253 of 2023

With

CRIMINAL MISC.APPLICATION (FOR TEMPORARY BAIL) NO. 1 of 2023

In R/CRIMINAL MISC.APPLICATION NO. 13253 of 2023

With

CRIMINAL MISC.APPLICATION (TEMPORARY BAIL) NO. 2 of 2023

In R/CRIMINAL MISC.APPLICATION NO. 13253 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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JAYSUKHBHAI ODHAVJIBHAI BHALODIA (PATEL)

Versus

STATE OF GUJARAT

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Appearance:

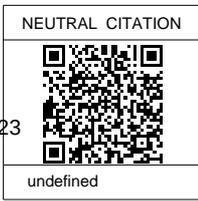
MR NIRUPAM D NANAVATY, SENIOR ADVOCATE WITH MR JAL UNWALLA, SENIOR ADVOCATE WITH MR YASH NANAVATY WITH MR. RAHUL R DHOLAKIA(6765) for the Applicant(s) No. 1

MR RAHUL SHARMA WITH MR UTKARSH J DAVE(10620) for the Respondent(s) No. 1

MR MITESH AMIN, ADDITIONAL ADVOCATE GENERAL AND PUBLIC PROSECUTOR WITH MR MANAN MEHTA, APP for the Respondent(s) No. 1

MR RONITH JOY for the victims

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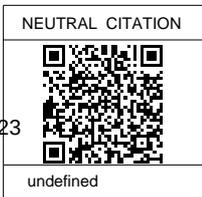
CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 19/12/2023

CAV JUDGMENT

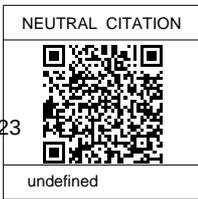
1. Heard learned Senior Advocate Mr. Nirupam D. Nanavaty and Senior Advocate Mr. Jal Unwalla assisted by learned advocate Mr. Yash Nanavaty and learned advocate Mr. Rahul Dholakia for the applicant, learned Public Prosecutor Mr. Mitesh Amin assisted by learned APP Mr. Manan Mehta for the respondent - State, learned advocate Mr. Rahul Sharma assisted by learned advocate Mr. Utkarsh Dave for the Victims' Association and learned advocate Mr. Ronith Joy for one of the victims who is not the member of victims' association.

2. Learned Senior Advocate Mr. Nirupam Nanavaty for the applicant submits that applicant has been arrested on 31.01.2023 and since then he is behind the bars. The investigation is already completed and after submission of charge-sheet, this application is preferred. The so-called fateful incident has taken place on 30.10.2022 and on the same day FIR has been registered. The applicant thereafter preferred an application for anticipatory bail before the concerned trial Court. However, in the meantime, the investigating officer has filed charge-sheet before the competent Court having jurisdiction to conduct the trial. Therefore, present applicant accused has surrendered on 31.01.2023 and since then he is in



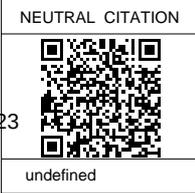
judicial custody. Learned Senior Advocate Mr. Nanavaty submits that on the fateful day i.e. on 30.10.2022, an unforeseen incident had occurred, whereby 'Julto Pul' (suspension bridge) situated over Macchu River at Morbi had collapsed and thereby 135 persons died and more than 100 persons were injured. It is alleged that the said incident occurred due to improper repairs and maintenance of the said suspension bridge and also due to mechanical lapses and for many other reasons. It is mentioned in the FIR that on the date of incident more than 250 to 300 persons were present on the said bridge. Learned Senior Advocate Mr. Nanavaty submits that by levelling the aforesaid allegations, FIR came to be registered against the company to whom the task of maintenance of the bridge was assigned, against the management of the said company and also against all such individuals whose names have come on surface during the course of investigation. Learned Senior Advocate Mr. Nanavaty further submits that present applicant accused is a businessman and Managing Director of Ajanta Manufacturing Pvt. Ltd. (OREVA Group), which undertakes various business activities, and more particularly, manufacturing of clocks and lighting products.

3. Learned Senior Advocate Mr. Nanavaty further submits that the applicant has provided employment to more than 10,000 women of nearby villages since the year 1995 and is also providing livelihood to more



than 2000 employees directly and approximately 7000 persons indirectly. It is an admitted fact that the company of the applicant was assigned with the task of management and renovation of said suspension bridge since the year 2008.

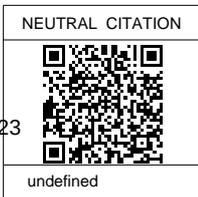
4. Learned Senior Advocate Mr. Nanavaty further submits that the police has also sought for remand and 7 days remand was also granted by the concerned Court and after the arrest of the present applicant accused, a supplementary charge-sheet also came to be filed by the investigating officer against the applicant accused for the offence punishable under Sections 304, 308, 336, 337, 338 and 114 of the Indian Penal Code. Learned Senior Advocate Mr. Nanavaty has further submitted that this Court has taken *suo moto* cognizance of the incident and a *suo moto* PIL has been filed before this Court and cognizance was taken by the Division Bench of this Court and in the said petition, the applicant accused appeared and by his own volition, he offered to compensate the family of the deceased and injured victims which was accepted by this Court and in pursuant to the orders passed by this Court, the applicant has already deposited an amount of Rs.14,62,00,000/- in Gujarat State Legal Services Authority. Learned Senior Advocate Mr. Nanavaty has submitted that it is alleged that present applicant accused has committed offence punishable under Section 304 IPC, however from bare perusal of the FIR



as well as charge-sheet papers, the ingredients of Section 304 of IPC would not be attracted and in absence of essential ingredients of the provisions of Section 304 IPC, that section is not required to be applied in the present case insofar as the applicant accused is concerned. It is further submitted that even if the entire case of the prosecution is accepted as it is, in that even also, the same would not fall under the category of a case of voluntary commission of offence by the applicant accused. Learned Senior Advocate Mr. Nanavaty further submits that before delving into the issue involved in the matter, he would like to bring to the notice of this Court certain provisions of Indian Penal Code. Learned Senior Advocate Mr. Nanavaty has read Sections 299, 300, 304 and 304A of IPC and submitted that for the purpose of invocation of Section 299, the prosecution has to prove the following essential ingredients.

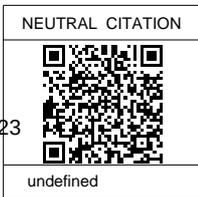
- * causing of a death of a human being
- * such death must have been caused by doing an act
 - (i) with an intention of causing death;
 - (ii) with the intention of causing such bodily injury as is likely to cause death, or
 - (iii) with the knowledge that the doer is likely by such act to cause death.

5. Learned Senior Advocate Mr. Nanavaty submits that plain reading of Section 304 makes it clear that



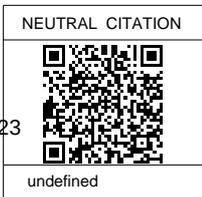
it is divided into two parts. In part I, it is stated that if bodily injury as is likely to cause death is intentionally caused and resultantly the victim died, the case would fall under Part-I, whereas Part-II stated differently. Part-II comes into play when death is caused by doing an act with knowledge that it is likely to cause death and when such act is the infliction of a bodily injury, the infliction must not be intentional. A bare perusal of the FIR as well as charge-sheet papers clearly goes on to show that the case of the applicant would not fall under Section 304 IPC since the ingredients of Section 304 are, prima facie, not established against the applicant and consequently invocation of Section 308 IPC would also pale into insignificance.

5.1. Learned Senior Advocate Mr. Nanavaty has submitted that it is settled proposition of law that whenever a case is riddled with the question, whether the offence is murder or culpable homicide not amounting to murder on the facts of a case, in that event, it will be convenient to consider the issue based on the aforesaid three categories. The question to be considered at the first stage would be, whether the accused has done an act and by doing such an act he has caused death of another person. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to 'culpable homicide' as defined in Section



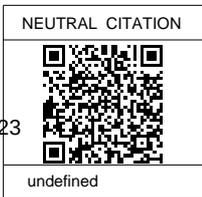
299. If the answer is in affirmative, the next stage would be for considering the operation of Section 300 IPC. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative, the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304 IPC. But before an accused is held guilty and punished under first part or second part of section 304, a death must have been caused by him under any of the circumstances mentioned in the five exceptions to section 300 of the Indian Penal Code.

6. Learned Senior Advocate Mr. Nanavaty further submits that in view of the aforesaid, section 304 of the Indian Penal Code does not create an offence of culpable homicide, not amounting to murder. That section provides for punishment in case of culpable homicide, not amounting to murder. The first part of it provides for punishment of such offence when the

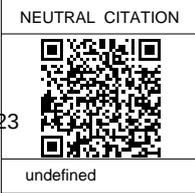


act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death. The second part of it provides for punishment in a case when the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. The offence that is made punishable under that Section is the same offence namely; an offence of culpable homicide not amounting to murder. It only provides different punishments, taking into consideration, whether the act was done with a particular intention or the act was done with the knowledge that is likely to cause death without any intention to cause death, or to cause such bodily injury as is likely to cause death. It is pertinent to note that Section 304 covers cases also where the offence is *prima facie* an offence of murder, punishable under Section 302, but in view of the application of any one of the exceptions given in Section 300 of the Indian Penal Code, the offence of murder is reduced to an offence of culpable homicide, not amounting to murder.

7. Learned Senior Advocate Mr. Nanavaty has submitted that if the Court would go through the statement of the witnesses as well as charge-sheet papers, it is found out that there is no *mens rea* on the part of the applicant and therefore it is the case of lack of *mens rea* on the part of the applicant



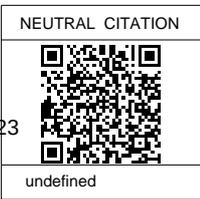
and in that event it can be said that at the most the case of the applicant would fall under the category of criminal negligency or alternatively he can be considered as vicariously negligent for commission of crime. The present applicant accused is 64 years old and he is behind the bars since last more than 8 months. The investigation is already completed and present application is filed after submission of charge-sheet. It is further submitted that more than 370 witnesses have been cited in the folio of the charge-sheet and if at all, for the sake of argument and without admitting it, the charges levelled against the applicant are to be accepted as it is, even in that event, it can be said that the case of the applicant accused would fall under the provisions of Section 304 Part II wherein the maximum punishment prescribed in the Statute is up to 10 years. The applicant accused is a businessman and running business since last 30-40 years and has also provided employment to umpteen number of persons. It is submitted that applicant has been made scapegoat and arraigned as an accused only on the basis of the fact that he is Managing Director and being the helm of affairs of entire empire of business he has been involved in the offence. The FIR has been registered against 10 accused persons, out of which, 6 co-accused have already been enlarged on bail and the case has already committed to the Court of Sessions but the trial has yet not commenced. The matter is pending at the stage of framing of the charge and at



this juncture the members of the victims' association have preferred an application for addition of Section 302 IPC and there are all possible chances that the said litigation would reach up to the Hon'ble Supreme Court and it will take considerably long period to conclude the proceedings. Learned Senior Advocate Mr. Nanavaty submits that considering the aforesaid ground reality the bail application of the applicant requires to be entertained as present applicant accused cannot be kept behind the bars for an indefinite period after submission of the charge-sheet as the maximum punishment for the offence alleged to have been committed by the applicant accused prescribed in the statute could be up to 10 years.

8. In support of the aforesaid submissions, learned Senior Advocate Mr. Nanavaty has put reliance upon the following decisions of the Hon'ble Apex Court as well as this Court:

1. In the case of *Keshub Mahindra v. State of Madhya Pradesh*, reported in 1996(6) SCC 129;
2. In the case of *Nitinchandra Somnath Raval v. State of Gujarat*, reported in 2019(14) SCC 676;
3. In the case of *Girishbhai Maganlal Pandya v. State of Gujarat*, reported in 2016(1) GLH 126;

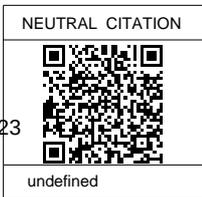


4. In the case of *Chandubhai Fakirbhai Patel & Others v. State of Gujarat* rendered in *Criminal Misc. Application No.15105 of 2022 and allied matters*.

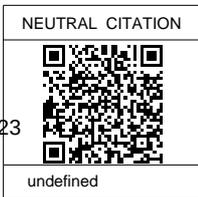
5. In the case of *Pratik Jagdishbhai Thakkar v. State of Gujarat* rendered in *Special Criminal Application No.9248 of 2016*.

9. Learned Senior Advocate Mr. Nanavaty submits that considering the ratio laid down by the Hon'ble Apex Court as well as this Court in plethora of decisions, it can safely be said that the case of the applicant accused would fall under the category of Section 304A of IPC which is bailable one and at this juncture without entering into further controversy, only on the strength of the case put forward before the Court, learned Senior Advocate Mr. Nanavaty is urging that applicant may be enlarged on bail by imposing suitable terms and conditions.

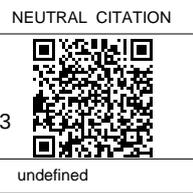
10. Per contra, learned advocate Mr. Rahul Sharma who appears on behalf of the Victims' Association has objected present bail application with vehemence and submitted that present applicant accused is the kingpin and on the strength of the material collected by the investigating agency, it is clearly established that present applicant accused was having sufficient knowledge about the condition of the



bridge and said fact is clearly fortified from the correspondence made by the present applicant accused under the letterhead of the company with various Government authorities. Learned advocate Mr. Sharma has read out the said letters and submitted that present applicant accused was definitely having sufficient knowledge about the weak condition of the bridge. Not only that the said bridge was within the control of the company of the applicant accused since the year 2008 and said fact is clearly established on the basis of the documents produced by the applicant as well as collected by the investigating officer during the course of investigation. Learned advocate Mr. Sharma further submitted that initially contract was assigned to Devprakash Solutions which has no knowledge or expertise skill of technical engineering work of the suspension bridge. In short, that company was not having expertise skill about the renovation work of the suspension bridge. It is an admitted position of fact that the said suspension bridge was constructed/built in the year 1887 and it was very old bridge and therefore during the interregnum period the condition of the bridge has become deteriorated. Therefore, in the year 2008, the said repairing/renovation work was assigned to the company of the present applicant accused by the Nagarpalika by executing MOU and since then the bridge was renovated and maintained by the former company of the present applicant accused. It is further submitted that recently in the year 2017, once again an MOU was



executed and contract was extended to the company of the present applicant accused. Considering the poor condition of the material of the bridge and for the purpose of maintenance work, use of the bridge was stopped by the Nagarpalika for certain period of time and thereafter all of a sudden during Diwali period, the said bridge was opened for public at large and therefore the said unfortunate incident has taken place wherein 135 persons have lost their valuable/precious life and more than 100 persons have sustained serious injuries. Learned advocate Mr. Sharma submitted that during the course of investigation, the investigating officer has supplied certain materials to the FSL and the FSL report clearly goes on to show that 49 cables were used to maintain the structure of the bridge. Out of those 49 cables, 22 cables were in a corroded condition and need to be removed for the purpose of maintenance and after replacing those cables, suspension bridge can be made functional. It is further submitted that instead of doing any concrete repairing work, only superficial work was carried out and certain lower quality of material was used and only colour work was carried out just to show that repairing work has been done. Not only that as per the report of the investigating agency, without obtaining prior permission from Nagarpalika, straight way they opened the bridge for public at large which ultimately led to such an unfortunate incident wherein number of persons have lost their valuable lives. The documents

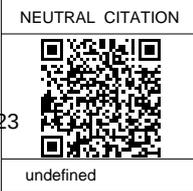


clearly goes on to show that applicant was having sufficient knowledge about the weak/poor condition of the bridge even though proper repairing work was not done and it was open for the use of public at large. Considering the above stated factual aspects, bail application of the applicant may not be entertained.

10.1. Learned advocate Mr. Rahul Sharma further submits that after the occurrence of the above said unfortunate incident, this Court has taken suo moto cognizance upon the facts of the matter and it reached up to the Hon'ble Supreme Court and as per the direction issued by the Hon'ble Supreme Court and this Court, formation of SIT was made and a detailed comprehensive report is prepared by the members of the SIT under the direct supervision of the Hon'ble Supreme Court as well as this Court. Despite the said fact, as per his opinion, the investigation is not done properly by the investigating agency.

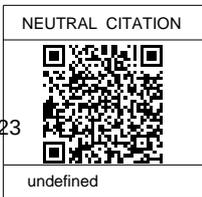
11. In support of the aforesaid submissions, learned advocate Mr. Rahul Sharma has put reliance upon the following decisions of the Hon'ble Apex Court:

1. In the case of *State of Andhra Pradesh v. Rayavarapu Punnayya & Anr.*, reported in (1976) 4 SCC 382; and
2. In the case of *Sunil Bharti Mittal v. Central Bureau of Investigation*, reported in (2015) 4 SCC 609;



12. Learned advocate Mr. Rahul Sharma submits that considering the fact that the applicant accused was having sufficient knowledge right from the beginning, nature and gravity of the charges, severity of the punishment in the event of conviction, position and standing of the accused in the society as he being a businessman there are all chances that the witnesses will be tampered with in the event bail is granted and when the applications preferred by the victim before the concerned Sessions Court for further investigation and addition of section etc. are pending, the bail application of the applicant may not be granted at this juncture.

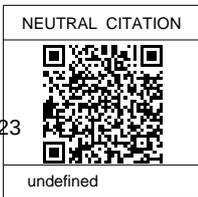
13. Learned advocate Mr. Ronith Joy appearing for the victims objected this bail application with vehemence and relying upon the report of SIT, submitted that the said report has been prepared by the technical experts and drawing attention of this Court to various parts of the said report, he submitted that not only the designs of the cable were changed but also the cables which were corroded were not repaired/replaced. It is further submitted that the report of SIT has not been challenged before any Court of law. It is submitted that no load test or structural test was carried out before opening of the bridge for public at large. It is therefore submitted that without carrying out safety test, the bridge was opened for public at large.



14. Learned Senior Advocate Mr. Nanavaty, at this juncture, submitted that the said report of SIT is not the part and parcel of the charge-sheet papers and therefore the Court may not rely upon the said report while dealing with the present bail application. Learned Senior Advocate Mr. Nanavaty insisted upon learned advocate Mr. Joy to read point No.3 at page 175 of the said report. Learned advocate Mr. Joy, therefore, read the said part of the report wherein it has been specifically stated that, 'it is to be duly mentioned that this office generally does not deal with this type of specialized structure. Hence, independent opinion from the expert may be obtained.'

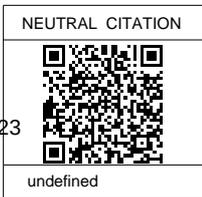
15. So far as the gravity of the offence is concerned, it is submitted that 135 persons have died out of which 65 were the children. Total 7 children have lost their both parents and become orphan. Many children have at least lost their one parent and many more persons have permanently disabled. It is submitted that almost all the victims were from lower strata of the society and in the city of Morbi there is no mall or cinema and suspension bridge was the only place where people went there for picnic on weekend and therefore it is the duty of the applicant accused to keep the said place safe.

16. Mr. Joy further submits that as per the original Rules related to the bridge, the bridge was having

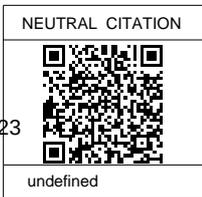


capacity to have only 10 persons over the bridge. As against that, around 300 persons were permitted which shows the negligence on the part of the present applicant being Chairman and Managing Director of the company. It is submitted that excessive sale of tickets at inflated price beyond the capacity of bridge goes on to show the greediness on the part of the applicant accused which has resulted into death of 135 innocent persons and therefore the applicant does not deserve any sympathy from this Court as the loss of lives of 135 persons is a direct result of greed of the present applicant. It is further submitted that the nature and gravity of offence being shocking, alarming and barbaric and day in and day out its effect spreads panic amongst the people and therefore also the applicant may not be enlarged on bail. Learned advocate Mr. Joy further submits that looking to the gravity of the offence and considering the fact that applicant is a businessman and headstrong person and if he is enlarged on bail, there are all chances that the witnesses will be tampered with, he may not be enlarged on bail.

17. Learned Additional Advocate General and Public Prosecutor Mr. Mitesh Amin assisted by learned APP Mr. Manan Mehta appears for the respondent- State has objected present bail application with vehemence and submitted that detailed and comprehensive arguments were canvassed by learned counsel appearing for the applicant as well as the victim side and therefore



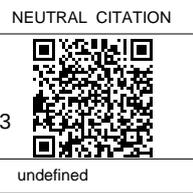
without reiterating the said facts and without wasting the valuable time of this Court, he is only concentrating upon the principle of law in the matter of bail enunciated by the Hon'ble Supreme Court and other High Courts up till now. He further submits that the principle of law of bail is decided by the Hon'ble Apex Court in numerous case laws and on the basis of the broad parameters and guidelines fixed by the Hon'ble Apex Court in the matter of bail, an appropriate order may be passed. It is further submitted that two persons who are managing the affairs of the company are in custody. It is further submitted that there are total 10 accused persons including the applicant accused and all the 10 accused persons are charge-sheeted by March, 2023. Mr. Amin further submits that 370 witnesses are there in the charge-sheet. The investigation has been concluded since March, 2023. The case is committed to the Court of Sessions. The victim side has given two to three applications before the concerned Sessions Court; one for further investigation and for addition of Sections etc. However, the investigating officer has submitted his report dated 18.09.2023 before the concerned Session Court inter alia stating that so far as investigation is concerned, nothing is left out. Learned Public Prosecutor Mr. Amin submits that so far as addition of Sections is concerned, since the charge is not framed, any side can prefer an application for addition and/or deletion of sections. Learned Public Prosecutor Mr. Amin further submits



that to grant or to refuse the bail is purely a matter of discretion and therefore in the facts of the present case, an appropriate order may be passed.

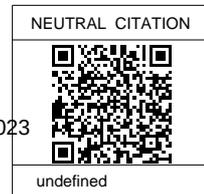
18. In rejoinder, learned advocate Mr. Rahul Sharma submits that so far as the period of incarceration is concerned, there are so many instances wherein for much petty offence accused remained in jail for longer period. Here in the present case, more than 135 persons have lost their lives and many more have been injured and therefore considering the gravity of accusation, this Court may not consider the period of incarceration undergone by the applicant accused.

19. I have perused the police papers as well as other documents produced by the applicant along with the memo of the application. I have also heard the learned counsel appearing for the respective parties. It is found out from the record that the unfortunate incident took place on 30.10.2022 wherein total 135 persons have lost their valuable lives and many persons have sustained injuries which ultimately lead to permanent disabilities. The FIR has been filed on the same day i.e. on 30.10.2022 against total 10 accused persons including the present applicant accused. The applicant accused has been arraigned as an accused on account of the fact that he is the head of the company to whom the work of maintenance and supervision has been handed over by the Nagarpalika and the company of the applicant was doing the said



work since many years. The applicant has been arrested on 31.01.2023 and since then he is in judicial custody. After his arrest, the investigating officer has sought for remand which was granted by the learned trial Court. The investigation is completed and after submission of charge-sheet present bail application is preferred. It is found out from the record that the case is committed to learned Sessions Court. Total 370 witnesses are cited in the charge-sheet papers. It is found out from the record and during the course of hearing of this application that charge is not framed and the victims have preferred two three applications before the concerned Sessions Court for further investigation as well as addition of Section 302 IPC. The said applications are pending. It is pertinent to note that whether the case of the applicant accused and other accused falls under the offence of 'murder' or 'culpable homicide' not amounting to murder is a question to be decided at the time of trial. However, at this stage, I would like to refer to the provisions of the IPC which are relevant for deciding present application. Section 299 Indian Penal Code reads as under:

"299. Culpable homicide.-Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable Homicide."

*Illustrations*

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

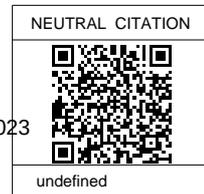
Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

19.1. Section 304 IPC reads as under:

"304. Punishment for culpable homicide not amounting to murder.— Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life], or



imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;
or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

19.2. Section 300 IPC provides thus:

300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly) —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary



course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos:—

(First) —That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

(Secondly) —That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

(Thirdly) —That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations



(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

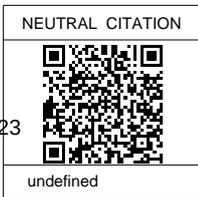
(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without



premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence. Illustration Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

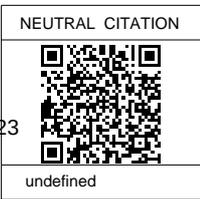
Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent. Illustration A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

19.3. Section 304A IPC reads as under:

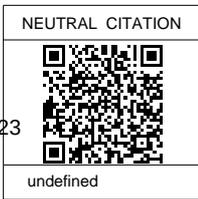
Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with



imprisonment of either description for a term which may extend to two years, or with fine, or with both.

20. It is true that to grant or to refuse bail is a matter of judicial discretion. But, at the same time, as held by the Hon'ble Supreme Court in the case of Gudikanti Narasimhulu v. Public Prosecutor, High Court of AP, reported in 1978 AIR (SC) 429, the vesting of discretion is the unspoken but inescapable, silent command of our judicial system, and those who exercise it will remember that discretion, when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humor; it must not be arbitrary, vague and fanciful, but legal and regular. The Court must not yield to spasmodic sentiment to unregulated benevolence. Thus, the discretion means sound discretion guided by law. It must be governed by rule and it must not be arbitrary, vague and fanciful but legal and regular and in the case of granting bail the judicial discretion of Judge must be exercised not in opposition to, but in accordance with the established principle of law.

21. At this stage, I would like to refer to the decision of the Hon'ble Apex Court in the case of Rajesh Ranjan Yadav @ Pappu Yadav Vs. CBI Through its Director, reported in (2007) 1 SCC 70, wherein, the Hon'ble Apex Court has laid down that, while



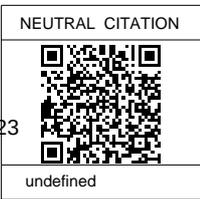
considering an application for regular bail, the Courts shall have to take into consideration, the following aspects:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant;
- (c) Prima facie satisfaction of the court in support of the charge;

21.1. The Hon'ble Apex Court, further, observed in paragraphs 10 and 16 thus;

"10. In our opinion none of the aforesaid decisions can be said to have laid down any absolute and unconditional rule about when bail should be granted by the Court and when it should not. It all depends on the facts and circumstances of each case and it cannot be said there is any absolute rule that because a long period of imprisonment has expired bail must necessarily be granted.

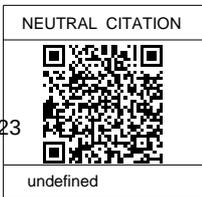
16. We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be



struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the Court has also to take into consideration other facts and circumstances, such as the interest of the society.”

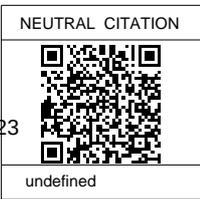
22. There cannot be any dispute with regard to the ratio laid down by the Hon'ble Supreme Court in the decisions relied on by learned Senior Advocate Mr. Nanavaty for the applicant. However, at the same time, while considering the bail application, this Court has to consider the gravity of offence, severity of the punishment in the event of conviction, the position and standing of the accused, reasonable apprehension of the witnesses being tampered with, etc. Thus, the aforesaid decisions would not render any assistance to the applicant accused in the facts of the present case.

23. It is also found out from the record that present applicant accused is Managing Director of the company to whom the work of renovation and repairing of the suspension bridge was entrusted by the Nagarpalika by executing MOU. It is also an admitted fact that since the year 2008 the said work was being carried out by the company of the present applicant



accused and applicant has made correspondence to the Collector as well as head of the Nagarpalika inter alia stating that the bridge is old one and condition of bridge is not up to the mark and repairing work is badly needed and required to be carried out by investing huge amount of money and the contents of the letters purportedly written by the applicant accused on the letterhead of the company would clearly go on to show that the condition of the bridge was in bad shape. Therefore, at this juncture, at least, it can be said that the fact about dilapidated condition of the bridge was well within the knowledge of the present applicant accused.

24. In is found out from the record that, *prima facie*, the applicant accused was having knowledge that this kind of unfortunate incident might have occurred for want of proper maintenance of the suspension bridge and even after having sufficient knowledge of the condition of the bridge, despite that, he has given permission to open the bridge for public. If the applicant being the head of the company would have taken sufficient corrective measures then this kind of unforeseen incident could have been prevented and valuable and precious lives of innocent persons could have been saved. Thus, without discussing anything on merits and demerits of the case, only considering the fact that, *prima facie*, the applicant accused was having sufficient knowledge right from the beginning, the nature and



gravity of the charges, severity of the punishment in the event of conviction, position and standing of the accused in the society as he being a businessman and when the applications preferred by the victims before the concerned Sessions Court for further investigation and addition of section etc. are pending, I am not inclined to entertain present bail application at this juncture. Accordingly, application stands dismissed. Rule discharged.

25. In view of dismissal of the main application, the connected applications do not survive and accordingly stand disposed of.

LAVKUMAR J JANI

(DIVYESH A. JOSHI, J)