

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 2595 of 2020

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SHEIKH SALIM SHEKHBABU

Versus

STATE OF GUJARAT & 2 other(s)

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Appearance:

MR IMTIYAJ M KURESHI(5301) for the Applicant(s) No. 1

MR K I KAZI(5030) for the Applicant(s) No. 1

for the Respondent(s) No. 3

NOTICE NOT RECD BACK(3) for the Respondent(s) No. 2

MR MITESH AMIN, PUBLIC PROSECUTOR with MS. JIRGA JHAVERI,
APP(2) for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MR. JUSTICE N.V.ANJARIA

Date : 05/08/2020

OF GUJARAT
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ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. The First Information Report came to be lodged being I-CR No. 111960122061 of 2020 on 06.07.2020 at Fatehganj Police Station, Vadodara City for the offences punishable

under Sections 302, 201, 203, 204 and 34 of the Indian Penal Code. Mr. S.G.Patil, Additional Commissioner of Police, E-Division is the first informant. The investigation of the said FIR is also handed over to the ACP, B-Division, Vadodara City.

2. On 21.07.2020, we directed the addition of Section 302 instead of Section 304 of the IPC as the Additional Police Commissioner Mr. Patil agreed to add the said provision before this Court. It is given to understand that such a report has already been made before the Court concerned on 30.07.2020.

3. The request came on the part of learned advocate for the petitioner Mr. Kazi to change the investigating agency with a grievance that till date, not a single accused has been arrested although all of them are police officers and police personals. His grievance is that the corpus is not available till date and although Section 302 of the IPC is agreed to have been added, there is no clarity about anything. He further submits that one of the Police Inspectors who has been

arraigned as an accused in this FIR has approached this Court seeking quashment of FIR qua him under Section 482 of the Code of Criminal Procedure by preferring F/Criminal Misc. Application No. 16291 of 2020.

4. We have heard learned Public Prosecutor Mr. Mitesh Amin appearing with learned Additional Public Prosecutor Ms. Jirga Jhaveri for the State who has urged that the FIR has been lodged on 06.07.2020. The Court may grant some more time to the investigating officer to reach to the truth. So far as the quashing petition is concerned, according to him, he has no knowledge as no advance copy is send to his office.

5. Learned advocate Mr. Kazi has fervently reiterated his request for change of investigation as according to him, unless that is done, there is no likelihood of reaching to the real truth which is otherwise the motto of every investigation and trial. He also further has urged that if on one hand the accused chooses not to be available to the investigating officer and on the other hand he prefers the petition before this Court seeking quashment, that itself speaks the volume of

connivance and hence, there will be an imminent need for the Court to change the investigating agency.

6. Having heard both the sides and also having noticed that it is a month since the FIR came to be lodged after the various orders passed in the present petition of habeas corpus, when it was realized after the inquiry conducted at the ends of some of the officers, there appeared no possibility of tracing the corpus and it is not out of place to mention that the whereabouts of the corpus is not revealed till date before the Court. We appreciate the fact that the officer concerned who is the complainant, had agreed before this Court to add Section 302 of the IPC, however, that agreement of addition of provision on his part is not sufficient discharge of duty, but, there will be a requirement of valid proofs before the Court of law. Much time has already lapsed and more the time will go, there is a likelihood of the evidence to be destroyed. Moreover, the Court cannot be oblivious of the fact that it is dealing with those persons who themselves are the veterans of the field of investigation and may also have mastered the art of overreacting the process and who, till

date, are not available to face the process of law, already initiated against them pursuant to the detailed directions issued by this court. There are shocking details emerging as to how for days and months, no clue is received of a missing person about whom inquiries were made incessantly.

7. Resultantly, it is utmost necessary for the investigating agency to gear up and reach to the truth of the matter by collecting all vital evidences and also ensuring that those evidences did not get lost. Therefore, the Court deems it appropriate to accede to the request of change of investigating agency rather than permitting some more time in the matter to the present agency as that may further result into loss of vital evidence.

8. Let the investigation be handed over to the CID Crime. The officer of the rank of Superintendent of Police shall be handed over the investigation and the same shall be supervised by the officer of the rank of Deputy Inspector General. The selection of the officers shall be done by Director General of Police who shall decide the name of

Superintendent of Police and also the officer who will supervise the entire investigation.

9. All the papers and the material that might have been collected so far by the Additional Commissioner of Police, E-Division, Vadodara City and by other officials prior to him, including the papers of inquiries shall be immediately transferred to the Superintendent of Police, CID Crime through the special messenger who shall take over the investigation and attend to the same on urgent basis. All possible assistance needed by the Superintendent of Police for reaching to the truth shall be rendered by the State.

10. Matter to appear on 19.08.2020.

(SONIA GOKANI, J)

(N.V.ANJARIA, J)

MISHRA AMIT V./Bhoomi