

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION NO. 9554 of 2020****With****R/CRIMINAL MISC.APPLICATION NO. 9555 of 2020****With****R/CRIMINAL MISC.APPLICATION NO. 9556 of 2020****With****R/CRIMINAL MISC.APPLICATION NO. 9578 of 2020****With****R/CRIMINAL MISC.APPLICATION NO. 9579 of 2020****With****R/CRIMINAL MISC.APPLICATION NO. 9613 of 2020****With****R/CRIMINAL MISC.APPLICATION NO. 9618 of 2020****ATALBIHARIKUMAR RAJENDRA MANDAL****Versus****STATE OF GUJARAT****Appearance:****MR SUDHIR NANAVATI, SENIOR ADVOCATE FOR NANAVATI & NANAVATI(1933) for the Applicant(s) No. 1****MR PRANAV TRIVEDI, ADDL. PUBLIC PROSECUTOR(2) for the Respondent(s) No. 1****CORAM: HONOURABLE MS. JUSTICE GITA GOPI****Date : 11/08/2020****ORAL ORDER**

In recent times, we have heard of several instances of industrial disasters arising out of leakages from factories / industrial plants involved in chemicals / fertilizers and other toxic substances. The Bhopal disaster, also referred to as the Bhopal gas tragedy, was a gas leak incident that took place on the night of 2 - 3 December 1984. It shakes the human conscience since the after-shocks could be seen even today, if one visits Bhopal. Very recently, i.e. in May 2020, an industrial

accident occurred at L.G. Polymers chemical plant situated at Visakhapatnam, Andhra Pradesh. The gas speedily spread in the places surrounding the chemical plant. Footage of people on the streets, collapsing on account of being unable to bear the gas and its pungent smell, is known to all.

1. The case on hand also relates to an industrial accident that occurred at "Yashasvi Rasayan Pvt. Ltd." (hereinafter referred to as "the Company") situated at Village Lakhi, Taluka Vagra, District Bharch, in which around 10 persons died and more than 75 sustained injuries. All the dead were workers / employees of the Company. Since all these applications involve common questions on law and facts and arise out of the same first information report, they are decided by this common order.

2. The applicants herein have prayed to release them on anticipatory bail in connection with the impugned complaint being FIR No.11199035200119 of 2020 registered with Dahej Marine Police Station, District Bharuch for the offences punishable under sections 304, 337, 338, 203, 285, 286, 287, 427 and 114 of IPC.

3. Mr. Sudhir Nanavaty, learned Senior Advocate appearing for the applicants in all these matters, submitted that the alleged incident took place on 03.06.2020 at around 1200 hrs. on account of a blast caused by a chemical reaction in the factory premises of the Company, which act could not be attributed to the applicants herein. It was submitted that the applicants are employees of the Company and are working as employees / officers in the Company.



3.1 Referring to the allegations made in the impugned complaint, it was submitted by the learned Senior Advocate appearing on behalf of the applicants that the applicants could not be alleged to have committed the offence under section 304 IPC. It was submitted that while unloading two different chemicals, viz. Dimethyl Sulphate (DMS) and Nitric Acid (NC), from the respective tankers to the respective storage chambers, on account of a bona fide human error, the hose-pipes of the two tankers, in which the said two chemicals were brought to the factory premises at the relevant time, got inter-changed and the two chemicals were transferred to the wrong storage chambers. In other words, the storage chamber containing DMS was connected with the hose-pipe of the tanker containing NA and the storage chamber containing NA was connected with the hose-pipe of the tanker containing DMS, which led to a chemical reaction in the storage chamber containing NA and ultimately, led to the blast.

3.2 Learned Senior Advocate placed reliance upon the decision of the Apex Court in the case of *Keshub Mahindra v. State of M.P.* reported in 1996 (6) SCC 250 wherein it has been held that that the material on record does not *prima facie* suggest that the applicants had the knowledge that such dangerous and highly volatile substance had been stored in the storage chambers and that they had the knowledge that the alleged act of negligence was likely to cause death of any human being. It was submitted that there is no material on record to show that the applicants herein are guilty of committing the offence of culpable homicide inasmuch as the applicants had not done any act, which had

caused death or that the applicants had the knowledge that their act would cause death. It was contended that the averments made in the impugned complaint nowhere attracts the elements of culpable homicide. It was, accordingly, urged that discretion may be exercised in their favour by releasing the applicants on bail.

3.3 Reliance was placed on the observations made by a coordinate Bench of this Court in the order passed in *Special Criminal Application No.7564 of 2015* decided on 23.12.2015;

“22. Thus, there is a fine distinction between section 304 and section 304A. Section 304A carves out cases where death is caused by doing a rash or negligent act which does not amount to culpable homicide not amounting to murder within the meaning of section 299 or culpable homicide amounting to murder under section 300 IPC. In other words, section 304A excludes all the ingredients of section 299 as also of section 300. Where intention or knowledge is the ‘motivating force’ of the act complained of, section 304A will have to make room for the graver and more serious charge of culpable homicide not amounting to murder or amounting to murder as the facts disclose. The section has application to those cases where there is neither intention to cause death nor knowledge that the act in all probability will cause death.”

3.4 It was submitted that as per the provisions of section 304-II IPC, the punishment prescribed is imprisonment for a maximum period of 10 years or with fine or with both and to prove the offence, the death of the person has to be shown to have been caused by the act of the accused and that the accused had the knowledge that such act of his is likely to cause death of the person.



3.5 It was submitted that a public interest litigation was filed before the National Green Tribunal, New Delhi and in the said proceedings, the Tribunal has passed an order awarding compensation of Rs.5 Lacs to the kin of the deceased and the injured have also been ordered to be compensated. Hence, the victims have already been compensated.

3.6 Lastly, it was submitted that this is not a case where custodial interrogation of the applicants is necessary. The applicants shall cooperate with the investigation and shall appear before the investigating officer as and when called for. It was submitted that original accused no.1 and 2 were put to Covid-19 tests; however, at that time, their statements were not recorded though the said two accused persons were available. It was, accordingly, urged that discretion may be exercised in favour of the applicants herein.

4. Mr. Pranav Trivedi, learned Additional Public Prosecutor, referred to the averments made in the impugned complaint to point out the sequence of events, which, ultimately, led to the blast. It was submitted that if the applicants had taken necessary corrective and preventive measures at the relevant point of time, the incident could have been averted. However, the lackadaisical and callous approach of the applicants led to the incident, which resulted into the death of around 10 people and around 77 injured. The magnitude of the release of chemical gas from the blast was such that the effects were felt in the atmosphere of the area in a radius of tens of kilometers.

4.1 It was further submitted that the incident had the

proportions of a tragic tragedy as hundreds of people residing in the surrounding areas were evacuated at the relevant time. It was contended that all the applicants had the knowledge about the chemicals which were being stored in the storage chambers. They were also aware about the chemical mixture that would be formulated on the mixing of the two chemicals. The act of criminal negligence whereby two different chemicals got mixed took place during the noon hours of 02.06.2020 to 03.06.2020 and if the applicants had taken necessary preemptive, precautionary and preventive measures at the relevant time and on urgent basis, the entire incident could have been averted. No neutralizing agent / chemical was put to use to douse the effect of the chemical reaction. The record reveals that the applicants and the Company slept over the act of criminal negligence for more than 24 hours and scrambled only after the blast occurred. The very fact that the applicants did not take any preventive measures for more than 24 hours shows their callous and irresponsible act, which led to the loss of life of around 10 people and around 77 injured and thus, the applicants are guilty of culpable homicide. It was, accordingly, urged that no discretion may be exercised in favour of the applicants.

5. Before we delve into the merits of the submissions advanced by the learned counsel on both the sides, it would be apposite to apprise ourselves on the law relating to pre-arrest bail. In the case of *Siddharam Satlingapa Mhetre v. State of Maharashtra and another* reported in (2011) 1 SCC 694, the Apex Court has laid down the parameters while dealing with a case of anticipatory bail.

6. The complainant in this case is Pulbhai Laxmanbhai



Gagiya, who was discharging duties as In-charge Police Sub-Inspector, Dahej Marine Police Station, Bharuch at the relevant point of time. It is averred in the complaint that on 03.06.2020, during the noon hours, while he and his other colleagues were at the police station, they heard some sound resembling a blast. They immediately rushed out of the police station and noticed that thick fumes were emanating from the factory premises of the Company. Therefore, the complainant along with some other staff immediately rushed to the factory premises of the Company. Necessary inquiry was carried out and ultimately, the impugned complaint came to be registered.

7. As per the impugned complaint, on 02.06.2020, at around 1200 hrs., while the original accused No.1 and 2 were on duty at the factory premises, the original accused No.2 informed original accused No.1 to unload the two tankers containing DMS and NA chemicals to the respective storage chambers. At around 1230 hrs., the original accused No.1 joined the storage chambers containing DMS and NA chemical solutions with the two tankers through hose-pipes. Thereafter, the electric pumps were switched-on for the purpose of transferring the chemicals from the tankers to the storage chambers through the hose-pipes. After around two hours, the original accused No.2 arrived at the place to check the transfer process of the chemicals to the respective storage chambers. However, at that time, original accused No.2 noticed that the hose-pipe of the tanker carrying DMS chemical had been connected with the header of the storage chamber containing NA and vice-versa.

8. Having noticed the aforesaid negligent act, original accused

No.2 informed the Production Incharge-original accused No.3, Nitric Acid Tank In-charge-original accused No.4, who also happened to be the Unit Head, the Head of Plant and Liquid Storage Farm Area-original accused No.5, the DMS In-charge-original accused No.6 and the Head of Fire and Safety-original accused No.7. It appears that thereafter, all the accused persons reached the spot and carried out preliminary inspections.

9. The most glaring aspect of the case begins here. It appears from the averments made in the impugned complaint that on 02.06.2020, at around 1200 hrs., two tankers had arrived at the factory premises of the Company. One tanker was containing NA and another was containing DMS. Around 18 tonnes of NA and 25 tonnes of DMS were under the process of unloading and it appears that by mistake, the in-let pipes of the tanks were interchanged and were connected to the wrong storage chambers. In other words, the hose-pipe of the tanker containing DMS was connected to the header of the storage chamber containing NA and the hose-pipe of the tanker containing NA was connected to the header of the storage chamber containing DMS. Thereafter, the chemicals got transferred to the wrong storage chambers through the hose-pipes.

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10. Here, it is pertinent to note that the factum of wrongful transfer of the two different chemicals contained in the tankers to the wrong storage chambers came to the notice of the applicants, original accused, at around 1430 hrs. on 02.06.2020. At that very moment, instead of taking necessary corrective measures for neutralizing the chemical reaction, it appears that the applicants did nothing and simply slept over



the entire event, as if the applicants were waiting for the tragedy to happen. On 03.06.2020 at around 1200 hrs. on account of a chemical reaction in the storage chamber 'B' containing Nitric Acid, a blast occurred. As a result of the blast, six workers died on the spot and four workers passed away during the course of treatment. In all, 10 persons died and around 77 workers were injured.

11. DMS is an oily liquid used extensively as an alkylating agent and is highly toxic for man, with particularly acute effects on the respiratory tract whereas, NA is a colorless, fuming and highly corrosive liquid. It is also toxic and can cause severe burns. Thus, it is a well known fact that the two chemicals – DMS and NA, which the applicants were dealing with, are highly toxic substances. The applicants are well versed with the chemical character of the liquids involved and are well aware of the consequences in the event of a chemical reaction arising out of a mixing of the two chemicals. The Company is engaged in the business of chemical processing and the applicants herein, who are serving on different technical posts requiring specialized knowledge and expertise to deal with such dangerous chemicals, were required to take immediate corrective measures for neutralizing the effect of the chemical reaction. Instead of taking any corrective measures, the applicants slept over the wrongful act for about 24 hours. If the applicants had taken necessary corrective measures on 02.06.2020 at around 1430 hrs. itself, which is when the wrongful transfer of chemicals came to their knowledge, the tragedy could have been averted and life could have been saved. Hence, in the opinion of this Court, the applicants herein are prima facie guilty of the offence of criminal

negligence leading to culpable homicide. Considering the facts and circumstances of the case and the principle rendered in the case of S.S. Mhetre (supra), the Court does not find this to be a fit case wherein discretion could be exercised in favour of the applicants.

12. In the result, the applications are not entertained and is, accordingly, rejected.

NVMEWADA

(GITA GOPI,J)



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THE HIGH COURT  
OF GUJARAT

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