presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that whether it is likely to lead to a conviction or not.

36. In view of above facts and circumstances, both these Revision Applications are allowed, as prayed for. Thereby impugned order dated 20.01.2010 charge-sheet to proceed further against petitioners are hereby quashed and set aside which results into discharging the petitioners from the offences registered against them pursuant to complaint no. RC/20(A) /2008/GNR and charges leveled against them in CBI Special case No. 3/2010.

3A. Amongst the accused at present we are concerned with accused as petitioner in Revision Petition no.857 of 2016 whereas accused as petitioner in Revision petition no.858 of 2016.

3B. At present the petitioners have challenged the order dated 20th January 2010 where by Special Court has ordered to issue process and to initiate criminal proceedings. However in view of the development on factual side , quashing of FIR and order dated 10th April,2015 in Special Criminal Application No. 2543/2012 petitioners are right to challenge such order and praying to remove the proceedings against them by quashing such orders dated 20.1.2010.

37. Rule is made absolute.

38. Direct Service is permitted.

Result:- Revision Applications allowed.

ABC 2017 (I) 88 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(A.J. Desai, J.)

Criminal Misc.Application (For Regular Bail) No. 26970 of 2016
Decided on 2 December, 2016

NARENDRADEV DVIJENDRAPRASAD PANDEY - Applicant(s).

Versus

STATE OF GUJARAT & ANR. - Respondent(s).

Law Covered:- (A) Code of Criminal Procedure, 1973 — Section 439 — Regular Bail — Indian Penal Code, 1860 — Sections 307,

397, 395, 365, 355, 354, 342, 147, 148, 149, 324, 323, 504, 506(2), 120(B), 201, 166A, 167, 466, 177, 204, 294(b), 505(1)(b), 509— Gujarat Police Act— Section 135— Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989— Sections 3(1)(e),(r),(s),(u), 3(2)(5a), 3(1)(d), 3(1)(za)(E), 3(1) (w)(i),(ii), 3(2)(vi), 3(2)(vii), 4 —Information Technology Act— Section 66A & 66B— Presence of the applicant not stated —Investigation completed — Charge sheet submitted — voluminous record of charge-sheet and examination of 338 witnesses — completion of trial would take considerable long time — applicant has been suspended from the services and departmental inquiry has already been initiated against him —The injured have already been discharged from the hospital — Bail granted. (Para 26)

(B) Code of Criminal Procedure, 1973 — Section 439 — Regular Bail — granting of —Held, whether the applicant is part of conspiracy or not, is required to be established by the prosecution after leading evidence before the trial court. (Para 26)

(C) Code of Criminal Procedure, 1973 — Section 439 — Regular Bail — Presence of the accused — None of the witnesses have stated about his presence at the place of incident or the police station — Bail granted.

Facts:- *While deciding the bail application it was held by the hon'ble High Court, whether the applicant is part of conspiracy or not, is required to be established by the prosecution after leading evidence before the trial court. When none of the witnesses have stated that the applicant was present at any of the places including Bus stand or police station, the applicant is entitled for bail during the pendency of the trial since the investigation is almost over.*

Law of relief:- None of the witnesses have stated about the presence of accused at the place of incident or the police station, Bail granted.

Held:- It is true that a report has been received from the FSL that the PSO had added the words "cow mutton is found" subsequent to making the entry by PSO himself. In my opinion, whether the applicant is part of conspiracy or not, is required to be established by the prosecution after leading evidence before the trial court. When none of the witnesses have stated that the applicant was present at any of the places including Una Bus stand or police station, in my opinion, the applicant is entitled for bail during the pendency of the trial since the investigation is almost over.

It is true that special provisions have been made for expediting the hearing of the cases of prevention of Atrocities Act, however, considering the voluminous record of charge-sheet and examination of 338 witnesses, completion of trial would take considerable long time and, therefore, considering the principle laid down by the Hon'ble Apex Court, applicant would be entitled for regular bail on appropriate terms and conditions. It is pertinent to note that the applicant has been suspended from the services and departmental inquiry has already been initiated against him. It is pertinent to note that the injured have already been discharged from the hospital. (Para 26)

Counsel:- ***For Appellant(s):*** *Mr Ashish M Dagli & Mr. Kishan Prajapati, Advocates.*

For Respondent(s): *Ms Ratna Vora, Advocate & Mr Mitesh Amin, Ld.Public Prosecutor with Mr HK Patel.*

JUDGMENT

A.J. DESAI, J.: - 1. By way of the present application u/s.439 of the Code of Criminal Procedure, 1973, the applicant has prayed to release him on regular bail in connection with an FIR being C.R.No.I-127 of 2016 registered with Una Police Station, Una for the offences punishable under sections 307, 397, 395, 365, 355, 354, 342, 147, 148, 149, 324, 323, 504, 506(2), 120(B), 201, 166A, 167, 466, 177, 204, 294(b), 505(1)(b), 509, etc. of the Indian Penal Code; Section 135 of the Gujarat Police Act; Sections 3(1)(e),(r),(s),(u), 3(2)(5a), 3(1)(d), 3(1)(za)(E), 3(1)(w)(i),(ii), 3(2)(vi), 3(2)(vii), 4 of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989; Section 66A & 66B of The Information Technology Act.

2. Pursuant to the Notice issued by this Court, Mr. Mitesh Amin, learned Public Prosecutor has appeared on behalf of the respondent- State of Gujarat and Ms.Ratna Vora, learned advocate has appeared on behalf of the original complainant and have opposed this application.

3. The present application is being heard subsequent to completion of investigation and submitting charge sheet before competent court below.

4. Facts emerge from the record as well as statements of the witnesses, are as under :

That on 11/07/2016, one Nitinkumar Mohanlal Kothari (one of the accused) along with two other persons, who are residents of Una and surrounding area, visited a school at Village: Mota Samadhiyala in connection with a project. After discussion with the Principal of the School of the said village, he inquired for another school. Having existence of another school at nearby village: Bediya, they left the said village and reached at Village Bediya. They did not find any school there and, therefore, after inquiry they returned and started travelling on Kachha road. At that time they saw two persons skinning some dead animals. Nitinbhai Kothari immediately returned on main road and called somebody and informed that certain persons were slaughtering the cows. Pursuant to which, four persons came on two bikes and started inquiry with those persons, who were present at the place. Those persons pretended them as cow vigilantes (Gaurakshaks) and within no time, number of persons gathered at the place and one white colour four wheeler also reached at the said place. Those persons, who had come on the bikes as well as in the car, started beating up those persons and also attacked two aged persons and a lady. Those persons were taken by those cow vigilantes (Gaurakshaks) in the four wheeler. Subsequently Nitinbhai Kothari along with those two persons left the place.

5. Since one person named Sarvaiya, informed the police control about some mischief being committed at the place of incident (at village: Mota Samadhiyala), and accordingly informed to the control room, which is situated at a place of Ahmedabad. The Control Room informed Una Police Station PSO namely Kanjibhai about the same at around 13:30 hours on the same day. The PSO made an entry in the Register and informed one ASI Kanchanben to visit the place. She along with her writer namely Kasnabhai proceeded to visit the place, where number of persons were gathered. Police Inspector of Una Police Station Mr. Zala informed one of the armed Police Constable, at about 14:15 hours to reach the said village Mota Samadhiyala along with Police Sub- Inspector Mr. Pandey, since he was informed that some more police force is required. Accordingly Police Sub-Inspector Mr. Pandey along with other police personnels visited the village: Mota Samadhiyala, where ASI Kanchanben with her writer was present. He found cow mutton in the rickshaw. Around 25 to 30 persons, who were gathered at the place were dispersed from the place of incident. It also appears from the record that two old aged persons and a lady, who had sustained injuries

were already transferred to Una hospital by an ambulance popularly known as "108 Ambulance". Those four persons, who alleged to have been skinning and/or cutting the cows, were taken in a car to Una town, which is around 25 kms. from the said village Mota Samadhiyala. Those persons were taken at bus-stand of Una and their shirts were removed and were tied with rope with the car and were beaten by number of persons. They were towed towards Una Police Station. When they reached at the police station, a police personnel removed the ropes and kept those injured in the Police Station.

The mob of people, who brought the injured, left the place immediately. The injured were thereafter got admitted in the Government Hospital.

6. When Police Inspector Mr. Zala, visited the Una Police Station, he came to know that some persons have been attacked and have sustained several injuries and have been admitted in the Una Hospital, he went to the Hospital and recorded an FIR at around 19:30 hours on 11/07/2016. The said FIR was lodged by one of the injured namely Vashrambhai Balubhai Sarvaiya. It was stated by the said Vashrambhai that he belongs to the scheduled caste and is doing work of skinning animals along with his father, cousins and other relatives. He further disclosed that when his father Balubhai Sarvaiya received a phone call of one Najabhai Danabhai that his cow was found dead at Village: Bediya and requested to remove the same. He along with his cousins went to Bediya Village and brought the cow in a rickshaw in their village namely Mota Samadhiyala and started skinning the cow. At that time, five persons came in four wheeler white car and told that they were cow vigilantes (Gaurakshaks) and started abusing and questioned why they were cutting the cow. By naming some of the accused, he has further stated that they had started beating with some Babule sticks as well as iron patti (iron pipe). When his father intervened, one of the accused named in the FIR, gave a blow on the head of his father Balubhai Sarvaiya. Thereafter the mobile of his father was looted and complainant and all his cousins were compelled to sit in four wheelers car and gave stick and pipe blow near Rameshwar Patiya and again went to Una Bus stand and they tied with ropes and thereafter they again tied with the car and beaten in public and taken towards Una Police Station and handed over them to the Police. The mob of the people left the place and subsequently the injured were admitted in the Government Hospital. An FIR was lodged for the offence punishable under

sections 307, 395, 324, 323, 504 of the Indian Penal Code; section 135 of the Gujarat Police Act and section 3(2)(5) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act,1989 [hereinafter referred to as "Prevention of Atrocities Act"].

7. The said FIR was recorded by the Mr. N.U.Zala, Police Inspector, Una Police Station. Since charges were levelled against the accused for the offence punishable under the provisions of the Prevention of Atrocities Act, Mr. Zala requested the PSO to hand over the investigation to Deputy Superintendent of Police, as per the provisions of the Prevention of Atrocities Act.

Deputy Superintendent of Police, Veraval was handed over the charge of investigating officer and accordingly he started collecting evidence in the matter. Subsequently investigation was handed over to Deputy Superintendent of Police, (Fraud Cell, CID Crime, State of Gujarat) and after completion of investigation, arraigned in all 32 accused for the offence referred in the first para of this judgement and charge-sheet came to be filed by him before the Competent Court.

8. The present applicant-accused - Narendradev Dvijendraprasad Pandey is one of the accused, who is charged with the aforesaid offence and against whom, charge-sheet has already been filed before the competent court.

9. Mr. Ashish Dagli, learned advocate for the applicant (Narendradev Pandey - P.S.I, Una Police Station) has vehemently submitted that the applicant has been wrongly arraigned as an accused in the offence as there is no allegation against him that when any of the injured was attacked by those cow vigilantes (Gaurakshaks), he was present and has permitted them to continue whatever they wanted. He would submit that as per the instruction given by his Higher Officer - Police Inspector Mr. Zala and informed by Mr. Dharmendrasinh (police witness), he along with other police personnels visited the village Mota Samadhiyala.

10. He would submit that when the applicant had reached at the said place around 14:45 hours, he found ASI Ms.Kanchanben present with her writer Mr. Kasnabhai and found one rickshaw lying there and found two dead bodies of cows, out of which, one was skinned and mutton of one cow was found lying in the rickshaw. He also found one Najabhai Danabhai at the place, who has shown the place and thereafter, called Prafulbhai and Mohanbhai of village:

Mota Samadhiyala as Panch witnesses and prepared a panchnama around 17:30 to 18:30 hours. He would submit that the applicant has also called veterinary doctor, who also reached at the place of incident and collected the samples of the cows and muttons. He would submit that the statement of Najabhai Danabhai was also recorded by him on 11/07/2015.

11. He would further submit that subsequently during investigation, panch witnesses and the said Najabhai Danabhai have refused their presence at the place. However, statement of veterinary officer Mr. Jigneshbhai Arvindbhai Chavda support the panchnama prepared by him and, therefore, it would be a question of trial, whose evidence is to be accepted i.e. of local residents or of Government Officer, who has visited the place as per the instruction of the present applicant.

12. He would further submit that when the applicant had reached at the village Mota Samadhiyala, none of the injured were present and only after completion of all the formalities, the applicant had returned to Una from the said village Mota Samadhiyala. It is not the case of any of the witnesses including injured witnesses that they were beaten in presence of the applicant. It is not the case of the prosecution that when the injured were brought to the police station he was present. He has taken me through the statement of Dharmendrasinh, who had travelled with him at Mota Samadhiyala and at various places on 11/07/2016. He would submit that the said Dharmendrasinh had also stated in his statement dated 27/07/2016 that when they were traveling towards Mota Samadhiyala, after receiving information from ASI Ms.Kanchanben, he had not seen one Xylo car, which alleged to have been used by other accused to shift those persons from village Mota Samadhiyala to Una town.

13. Mr. Ashish Dagli, learned advocate for the applicant would submit that it is not the case of any of the witnesses including police witnesses, who accompanied him at village Mota Samadhiyala that when the applicant reached at the place, those persons were being beaten up by number of persons including those referred in the FIR. He would submit that even parents of one of the injured complainant and another old persons were already shifted to the Government Hospital at the instance of ASI Kanchanben.

He would submit that after the persons, who gathered at the village Mota Samadhiyala disbursed, he along with other persons

went for lunch and returned again at Mota Samadhiyala and recorded the statement of Najabhai and prepared panchnama. Even he waited for veterinary officer to come and to collect the samples and returned only after carrying out the procedure required to be done. The applicant was not informed by anyone that some persons were abducted in Xylo car and subsequently beaten up at different places by some other accused. The applicant had visited the place as per oral instruction given by Police Inspector Mr. Zala and did remain in contact with him by telephone and, therefore, the case put forward by the prosecution that the police personnels were in contact with each other and permitted the assailants to continue illegal activities are baseless.

14. He would further submit that it is alleged by the prosecution in the charge-sheet that a conspiracy was hatched by him along with those police personnels, who have been arraigned as accused in the present case, to commit such offence since the injured were involved in slaughtering the cows. He would submit that it is not the case of the prosecution that the applicant was in contact with the assailants, whose names have been stated in the FIR by the injured complainant or any other accused except accused from police department or witnesses of the department.

15. He would submit that the applicant has already been suspended from the services and departmental inquiry has already been initiated wherein allegations have been made that he was negligent in performing his duty on 11/07/2016 when the incidents in question took place. He would submit that investigation is over and charge-sheet is filed and therefore, there is no question of tampering with the evidence. There are more than 338 witnesses and, therefore, trial is likely to take some longer time and therefore, considering the principle laid down by the Hon'ble Apex Court in various decisions with regard to grant of bail of an accused, who has not been tried, the applicant be released on bail.

16. Mr. Ashish Dagli, learned advocate for the applicant has vehemently submitted that the applicant has been wrongly roped in the offence with the reasons best known to the Investigating Agency since no material whatsoever has been collected by the Investigating Agency. He would submit that it is not the case of the prosecution that at any of the places, where the injured persons were beaten, the applicant was present. He would submit that even when the injured

were brought to the police station, he was not present. It is not the case of either injured witnesses or prosecution witnesses that though the applicant was aware about the incidents being happened either at Mota Samadhiyala village or in Una town, he has neglected the same and has permitted those accused to continue beating up those persons.

17. He would further submit that it is alleged by the prosecution in the charge-sheet that a conspiracy was hatched by him along with those police personnels, who have been arraigned as accused in the present case, to commit such offence since the injured were involved in slaughtering the cows. He would submit that it is not the case of the prosecution that the applicant was in contact with the assailants, whose names have been stated in the FIR by the injured complainant or any other accused except accused from police department or witnesses of the department.

18. Mr. Mitesh Amin, learned Public Prosecutor appearing on behalf of the respondent- State of Gujarat would vehemently submit that papers of investigation reveals that when the incidents have taken place at various sites, some persons in the name of cow vigilantes (Gaurakshaks) have mercilessly beaten the poor scheduled caste persons and old aged persons and that too when they were skinning the dead- bodies of some cows. He would submit that Nitinbhai, who is one of the accused, had seen those persons skinning the cow first time, informed someone that cows are being slaughtered. Pursuant to which, number of persons came at village Mota Samadhiyala and started beating to those persons.

He would further submit that when police controller, Ahmedabad received an information that some cow vigilantes (Gaurakshaks) are beating some persons at village Mota Samadhiyala, he immediately informed the concerned PSO of Una Police Station about the same. By taking me through the Vardhi recorded by the PSO Kanjibhai (who is also an accused and not before the Court) dated 11/07/2016 recorded at 13 hours, would submit that initially it was written by him that "at village Mota Samadhiyala, some police personnels are required to be sent", however, subsequently by overwriting "cow mutton has been found from the place" words have been added. These words have been added to justify the inaction on the part of police, when it was known that some persons have been attacked at village Mota Samadhiyala. He would submit that the

applicant along with police personnels reached at village Mota Samadhiyala, wherein a panchnama was drawn in presence of two panchas namely Prafulbhai and Mohanbhai as if some mutton was lying at the place, however, those two panchas have denied their presence when their statements have been recorded. He would submit that in the panchnama, it is referred that one Najabhai Danabhai was present at the place, who has shown the same, however, said Najabhai has also denied his presence at the place.

19. Mr. Mitesh Amin, learned Public Prosecutor has also taken me through several photographs, which show that the shirts of the injured were removed by some of the accused and being beaten by those accused, tied with the rope and car as well as one photograph suggests that they were found in tied condition in front of Una Police Station. The applicant has not taken any action and, therefore, the applicant is not entitled to enlarge on regular bail.

He would further submit that the accused is facing serious charges including offence of section 307 of the Indian Penal Code and Section 3(2)(v) of the Prevention of Atrocities Act which are punishable with imprisonment for life. Section 4 of the Prevention of Atrocities Act provide duty of public servant and punishment and willfully neglecting the duties. Special Courts are established for expedient completion of trial. Therefore, he submits that when the investigation is over, the trial shall be concluded within short time.

20. Mr. Mitesh Amin, learned Public Prosecutor would further submit that though the investigation is over by Deputy Superintendent of Police, Fraud cell, CID Crime, Gandhinagar, the complainant has requested for further investigation and has filed Public Interest Litigation, which is pending before this Court. He, therefore would submit that the application may not be entertained at this stage.

21. Ms.Ratna Vora, learned advocate for the original complainant would submit that the applicant being P.S.I. of Una Police Station, within whose jurisdiction the incident has taken place, is a responsible person for entire incident. She would further submit that in connivance with Police Inspector Mr. Zala, he has tried to convert the real incident into the offence as if the same had been committed by the injured by slaughtering the cows. She would submit that though the incident continued for four to five hours, procession was allowed to continue and the innocent persons were

beaten in public. The applicant has not taken any action for the reasons best known to him and, therefore, he would submit that the application may be rejected. a

22. I have heard learned advocates appearing on behalf of the respective parties and perused the papers of investigation, particularly statements of witnesses including police personnels; Medical Certificates issued with regard to injuries sustained by those b persons; the photographs, which are part of charge-sheet produced by learned Public Prosecutor; report received from Forensic Science Laboratory; etc.

23. Prima facie, it appears that the injured, who are from scheduled castes, are earning their livelihood by carrying out c activities like skinning the dead animals., etc., particularly in the present district, which is known for lions and other wild animals habitats. In certain incidents, the animals are hunted by wide animals and their dead bodies are found lying in the Farms. Those persons, who are aware that certain persons are expert in skinning the animals, d are informed to do needful and accordingly they carry out the work.

Some persons might be carrying out illegal activities of slaughtering the cows and, therefore, local residents have created awareness amongst themselves to stop such illegal activities.

24. In the present case as stated hereinabove, one Nitinkumar e Kothari, who had gone to a school for some project, found some persons with the dead bodies of cows and accordingly he informed those persons posed themselves as Cow Vigilantes (Gaurakshaks). Pursuant to his intimation, number of persons gathered at the place (village : Mota Samadhiyala), where the persons were found with the f cow dead bodies. When they started abusing those persons and misbehaving them, one Sarvaiya informed Police Control Room at Ahmedabad. Control Room of Ahmedabad informed the PSO of Una Police Station, who recorded the entry in the Register and informed ASI Kanchanben and her team to visit the place (Kanchanben is one of g the accused in the present case and has already been enlarged on bail).

When Kanchanben reached at the place, two aged persons and one aged lady (parents of one of the injured) were found having sustained some injuries and accordingly, they were sent to the h Government Hospital.

Whether those injured along with other accused were present or not when ASI Kanchanben reached the place, would be decided at the end of the trial. However, it appears that having found number of persons together at village: Mota Samadhiyala, the applicant reached the place along with police witness Dharmendrasinh. However, he found only some dead cows. Neither old injured persons or those four persons, who alleged to have been abducted in Xylo Car, were present.

25. As far as statement of Najabhai Danabhai is concerned, it appears that he has refused that he has never been informed about cow slaughtering. I have gone through the further statement of the complainant, it appears that he has changed his version, instead of Najabhai Danbhai, he states that some other person has informed about the dead cow. It also appears that the Veterinary officer had visited the place and collected some samples of cow mutton and he has stated accordingly in the statement recorded by the Investigating Agency and, therefore, in my opinion, it is premature to decide whether the Panchas and Najabhai are right or Government veterinary officer, who had collected the samples, is right.

It is not the case of any of the witnesses that any of the places including village: Mota Samadhiyala, Rameshwar Patia, Una Bus Stand, Una Police station, when the injured were beaten up, the applicant was present and had not taken any action against any of the attackers.

26. It is true that a report has been received from the FSL that the PSO had added the words "cow mutton is found" subsequent to making the entry by PSO himself. In my opinion, whether the applicant is part of conspiracy or not, is required to be established by the prosecution after leading evidence before the trial court. When none of the witnesses have stated that the applicant was present at any of the places including Una Bus stand or police station, in my opinion, the applicant is entitled for bail during the pendency of the trial since the investigation is almost over.

It is true that special provisions have been made for expediting the hearing of the cases of prevention of Atrocities Act, however, considering the voluminous record of charge-sheet and examination of 338 witnesses, completion of trial would take considerable long time and, therefore, considering the principle laid down by the Hon'ble Apex Court, applicant would be entitled for

regular bail on appropriate terms and conditions. It is pertinent to note that the applicant has been suspended from the services and departmental inquiry has already been initiated against him. It is pertinent to note that the injured have already been discharged from the hospital.

27. In the facts and circumstances of the case and considering the nature of allegations made against the applicant in the FIR, without discussing the evidence in detail, prima facie, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on **regular bail.** Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with an offence being C.R.No.I-127 of 2016 registered with **Una Police Station, Una,** on executing a personal bond of **Rs.25,000/-** (Rupees Twenty Five thousands only) with one local surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that he shall;

[a] not take undue advantage of liberty or misuse liberty;

[b] not act in a manner injuries to the interest of the prosecution;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave the State of Gujarat without prior permission of the Sessions Judge concerned;

[e] shall not enter in local limits of Taluka: Una, for a period of six months except for attending the court; [f] furnish latest address of his residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

[g] shall mark his presence on every Monday for a period of six months to the nearest Police Station, where he is going to reside for six months;

[h] After entering into Taluka: Una, he shall mark his presence with the concerned Police Station on any day of first week of every English Calendar Month till trial is over, between 10:00 a.m. and 2:00 p.m.;

28. The Authorities will release the applicant only if he is not required in connection with any other offence for the time being. If

breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the learned Lower Court having jurisdiction to try the case.

29. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law. At the trial, learned Trial Court shall not be influenced by the observations of preliminary nature, qua the evidence at this stage, made by this Court while enlarging the applicant on bail. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

***Result*:-** Application allowed.

ABC 2017 (I) 101 GUJ
ACQUITTAL & BAIL CASES

HIGH COURT OF GUJARAT

(Harsha Devani & Biren Vaishnav, JJ.)
Special Criminal Application (Habeas Corpus) No. 4937 of 2016
Decided on 23 December, 2016

HAMIRBHAI DANABHAI GABU ***- Appellant(s).***

Versus

STATE OF GUJARAT & ORS. ***- Respondent(s).***

Law Covered*:-** ***(A) Constitution of India — Article 21— Right to life & personal liberty — Detenue — release order — Dispatched by fax & ordinary post — Detenue not released due to non receipt of order — Additional mode of communication i.e. mobile phone/VHF wireless communication — Held, there is no reason why such modes of communication, in addition to the written mode should not have been or be adopted in confirming receipt of Release/Revocation Orders— the stand of the State and its Officers exhibits the casual manner— the values of personal liberties enshrined u/Art 21 not respected— the State acted without any sense of responsibility and genuine concern for the liberty of the subject —The action/omission led to a flagrant infringement of the fundamental right of the detenue who continued to be under illegal incarceration of the State — Compensation awarded. (Para 11, 12.1 & 13)

January 2017