

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

=====

R/CRIMINAL MISC.APPLICATION NO. 6930 of 2024
TEJAL ASHISHKUMAR DOSHI

Vervus
STATE OF GUJARAT
WITH

R/CRIMINAL MISC.APPLICATION NO. 6931 of 2024
NEHABEN DIPENBHAI DOSHI

Vervus
STATE OF GUJARAT
WITH

R/CRIMINAL MISC.APPLICATION NO. 7334 of 2024
VAISHAKHIBEN PARESHBHAI SHAH W/O YASHKUMAR

Vervus
STATE OF GUJARAT
WITH

R/CRIMINAL MISC.APPLICATION NO. 7338 of 2024
NUTANBEN PARESHBHAI SHAH W/O PARESHBHAI SHAH

Vervus
STATE OF GUJARAT

=====

Appearance:**CRIMINAL MISC.APPLICATION NO. 6930 of 2024-**

MR JAL SOLI UNWALA, SENIOR ADVOCATE WITH
RAHUL R DHOLAKIA for the Applicant(s) No. 1

MR RC KODEKAR, SPECIAL PP (1395) for the Respondent(s) No. 1

MR MEHUL DHONDE, ADVOCATE FOR

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

CRIMINAL MISC.APPLICATION NO. 6931 of 2024-

MR RASESH SANJANWALA, SENIOR ADVOCATE WITH
JAY M THAKKAR for the Applicant(s) No. 1

MR RC KODEKAR, SPECIAL PP (1395) for the Respondent(s) No. 1

MR MEHUL DHONDE, ADVOCATE FOR

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

CRIMINAL MISC.APPLICATION NO. 7334 of 2024-

MR CHETAN PANDYA for the Applicant(s) No. 1

MR RC KODEKAR, SPECIAL PP (1395) for the Respondent(s) No. 1

MR MEHUL DHONDE, ADVOCATE FOR

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

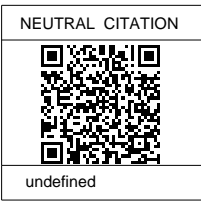
CRIMINAL MISC.APPLICATION NO. 7338 of 2024-

MR CHETAN PANDYA for the Applicant(s) No. 1

MR RC KODEKAR, SPECIAL PP (1395) for the Respondent(s) No. 1

MR MEHUL DHONDE, ADVOCATE FOR

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



=====

CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY

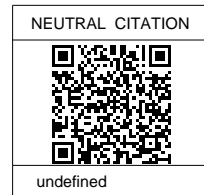
Date : 08/05/2024

COMMON ORAL ORDER

1. These are the four separate Criminal Miscellaneous Applications filed by the Applicants namely;
- (i) Tejal Ashishkumar Doshi [Criminal Miscellaneous Application No. 6930/2024]
 - (ii) Nehaben Dipenbhai Doshi [Criminal Miscellaneous Application No. 6931/2024]
 - (iii) Dr. Vaishakhiben Pareshbhai Shah [Criminal Miscellaneous Application No. 7334/2024]
 - (iv) Nutan Pareshbhai Shah [Criminal Miscellaneous Application No. 7338/2024]

under Section 439 of the Code of Criminal Procedure for enlarging them on Regular Bail in connection with common FIR being C.R. No. 11196036240021 of 2024 registered with Harni Police Station, Vadodara City for the offences punishable under Sections 304, 308, 337, 338 and 114 of the Indian Penal Code. The Applications are therefore disposed of by this common order.

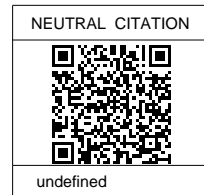
2. Heard learned Senior Advocate Mr. Jal Soli Unwala appearing with learned Advocate Mr. Rahul R. Dholakia for the Applicant in Criminal Miscellaneous Application No. 6930 of 2024; learned Senior Advocate Mr. Rashesh Sanjanwala appearing with learned Advocate Mr. Jay M. Thakkar for the Applicant in Criminal Miscellaneous Application No. 6931 of 2024; learned Advocate Mr. Chetan Pandya for the Applicant in Criminal Miscellaneous Application Nos. 7334 of 2024 and 7338 of 2024. Also heard learned



Advocate Mr. Mehul Dhonde for learned Advocate Mr. Utkarsh J. Dave appearing on behalf of the victims and Mr. R.C.Kodekar appearing as learned Special Public Prosecutor in all the matters.

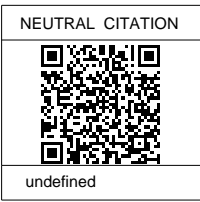
3. Rule. Learned Special Public Prosecutor waives service of notice of Rule on behalf of the Respondent - State of Gujarat, learned Advocate Mr. Mehul Dhonde waives service of notice of Rule on behalf of the victims.

4. It is submitted on behalf of the learned Advocates appearing on behalf of the respective Applicants that; in the present offence, the investigation is over and charge sheet is filed and, the present Applicants are the ladies and are in custody since last almost three months or more. The present Applicants were inducted as Partners of M/s. Kotia Projects in the Year 2018. The Applicants herein were the non-acting partners of the firm. None of the Applicants were responsible for day-to-day administration of the affairs of M/s. Kotia Projects. The Applicants herein were merely having 5% share in the profit as per the Partnership Deed itself. None of the Applicants have participated or signed the Boating Agreement which was executed between the Vadodara Municipal Corporation ("VMC") and M/s. Kotia Projects. Since M/s. Kotia Projects did not have any technical knowhow for running an activity of Boating in the lake, a sub-contract was given by M/s. Kotia Projects to M/s. Tristar Enterprise and, as per the agreement of sub-contract entered into between the M/s. Kotia Projects and M/s. Tristar Enterprise, it was the M/s. Tristar Enterprise, who was liable for procuring the safety equipments and to take necessary actions to ensure the safety of the persons who would come for the purpose of boating. M/s. Kotia Projects was not directly responsible for making the arrangement for safety equipments and other arrangements to ensure the safety of the people. It is also submitted that the agreement which was entered into between the VMC and M/s. Kotia Projects, the VMC allowed M/s. Kotia Projects to enter into a sub-contract for administration of Harni



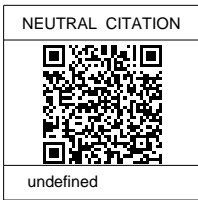
Lake along with the activity of boating, and therefore, the act on the part of M/s. Kotia Projects in entrusting the work of maintenance of boating activity to the third party was not without permission of the VMC. The present Applicants were the partners of the firm only for the namesake and, as stated herein above, were not responsible for running the day-to-day affairs of the partnership firm. The partnership deed provides for the responsibilities of the partners in the administration of the firm. As per the same, the present Applicants have not been assigned any responsibility, and therefore, the Applicants cannot be held responsible for the mishap which had occurred on the fateful day. There is no distant nexus between the present Applicants and the unfortunate incident in question. It is also submitted that; as per the case of prosecution, sufficient numbers of life jackets were not available at the site of boating though it was mandatory for running the boating activity in the lake. However, the material available on record indicates that sufficient number of life jackets were available and the same were also provided to the children as well to the Teachers who boarded the boat on the fateful day. In fact the cause for an unfortunate incident was not the unavailability of the life jackets but it was the overloading of a boat. It has also come on record that; at the time of incident, the boat in question was overloaded and, one of the Teachers, who had boarded the boat, rose for taking up a selfie, which created an imbalance in the boat, and because of it, the boat sank. It is also submitted that the present Applicants are sought to be implicated in the present offence on the basis of principle of vicarious liability. However, the principle of vicarious liability is unknown to the criminal jurisprudence. The learned Advocates appearing for the respective Applicants have sought to rely upon catena of judgments on the issue of vicarious liability. Some of them are as follows:

- (i) Sham Sunder & Ors. Vs. State of Haryana - (1989) 4 SCC 630
- (ii) Harakchand Ratanchand Banthia & Ors. Vs. Union of India & Ors. - 1969 (2) SCC 166



- (iii) State of Haryana Vs. Brij Lal Mittal & Ors. - (1998) 5 SCC 343
- (iv) S.K.Alagh Vs. State of Uttar Pradesh & Ors. - (2008) 5 SCC 662
- (v) State of NCT of Delhi Vs.Rajiv Khurana - (2010) 11 SCC 469
- (vi) Shiv Kumar Jatia Vs. State of NCT Delhi - (2019) 17 SCC 193
- (vii) Jaisukhbhai Odhavjibhai Bhalodiya (Patel) Vs. State of Gujarat & Anr. - Criminal Appeal No.1763 of 2024
- (viii) Kurban Hussein Mohamedalli Rangawalla Vs. State of Maharashtra - (1965) 2 SCR 622
- (ix) Kushub Mahindra Vs. State of M.P. - (1996) 6 SCC 129
- (x) Nitinchandra Somnath Raval Vs. State of Gujarat & Ors. - (2019) 14 SCC 676
- (xi) Girishbhai Madanlal Pandya Vs. State of Gujarat - 2016 (1) GLH 126
- (xii) P.M. Raju Vs. State of Kerala & Ors. - 2021 SCC OnLine Ker 1038
- (xiii) Muhammed Rinshad Vs. State of Kerala - 2023 SCC OnLine Ker 5404
- (xiv) Sebastian Joseph Vs. State of Kerala - 2023 SCC OnLine Ker 5475
- (xv) Fakhrey Alam Vs. State of Uttar Pradesh - 2021 SCC OnLine SC 532
- (xvi) M. Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence - (2021) 2 SCC 485
- (xvii) C.Parthsarthy Vs. Directorate of Enforcement - 2022 SCC OnLine TS 1075
- (xviii) Chitra Ramkrishna Vs. Central Bureau of Investigation - 2022 SCC Online Del 3124
- (xix) Subhash Bahadur @ Upendar Vs. District (NCT of Delhi)

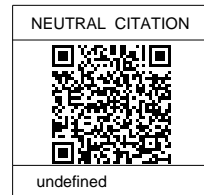
5. It is submitted, by no stretch of imagination, the present Applicants can



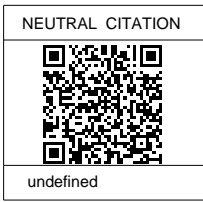
be said to have committed an offence punishable under the provisions of Section 304 of IPC. At best, the Applicants can be alleged to have committed an offence punishable under Section 304A of IPC.

6. As noted earlier, all the present Applicants are ladies and majority of them are house-wives, whereas one of the Applicant is a Dentist by profession. The Applicants do not have any other antecedents nor are they at the flight risk. It is therefore submitted to allow the present Applications and enlarge the Applicants subject to suitable conditions.

7. Learned Advocate Mr. R.C.Kodekar who appears as Special Public Prosecutor in the matters has opposed the Applications. He submitted that in view of the various provisions of the Partnership Act, all the partners of the firm are directly liable and responsible for the act of the firm. None of the present Applicants have been named in the Partnership Deed as Sleeping Partners and therefore it is not right to contend on behalf of the Applicants that the Applicants were either non-active partners or were Sleeping Partners. He submitted that as is sought to be contended by the learned Senior Advocates appearing for the Applicants that one Dharmil Shah and Vatsal Shah were responsible for the purpose of accounts, it was for them to run the entire affair of the partnership firm. He submitted that this contention raised on behalf of the Applicants is devoid of any merit as the said Dharmil Shah and Vatsal Shah were assigned the duties of managing the accounts of the partnership firm only. These two partners were not at all said to be responsible for running the day-to-day affairs of the partnership firm as per the Partnership Deed itself. Therefore, all the partners, including the present Applicants, were equally responsible for running the day-to-day affairs of the partnership firm, and therefore, it was the duty of all the partners to see that the activity of boating was run with due care and caution, which was required to be employed as per



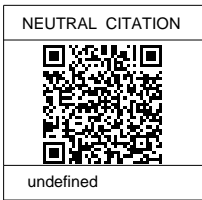
the Boating Agreement. The present Applicants, being the partners of the firm, had not ensured the fact that all the safety guidelines for running the boating activity were duly complied with. He further submitted that, if the agreement which was entered into between the VMC and M/s. Kotia Projects is perused, the said agreement did not allow M/s. Kotia Projects to enter into a sub-contract for the purpose of boating. The VMC was kept in dark by the M/s. Kotia Projects while entering into a sub-contract with M/s. Tristar Enterprise for running a boating activity in the lake. He also submitted that the VMC had also sent a reminder to the M/s. Kotia Projects to ensure that the safety guidelines were complied so far as the activity of boating was concerned. There was a flagrant violation of the safety guidelines prescribed by the VMC for running an activity of boating in the lake. Sufficient number of life jackets were not available with the agency who was running the activity of boating and the children as well as Teachers who had boarded the boats were not provided any life jackets when the unfortunate incident had taken place. As per the agreement, it was incumbent upon the M/s. Kotia Projects to ensure that CCTV Cameras were in place and the same were functional. However, in the site visit after the unfortunate incident, it was noticed that there were no sufficient number of CCTV Cameras installed and whatever Cameras were available, were in non-functional condition. The agency in question would have foreseen the unfortunate incident as there were no safety measures in place and there was clear violation of the safety guidelines prescribed for the purpose and, despite the same, the agency in question had continued to run the activity of boating. In fact, when an activity of boating was being carried out in the lake, which was some what deep, a higher degree of precaution and safety was expected, which was apparently absent. The agency in question had permitted the boats to be overloaded beyond permissible limits. It was also one of the cause for the incident in question.



7.1 Since, as discussed herein above, the firm in question ought to have foreseen and known that some unfortunate incident was likely to happen as the activity of boating was being run without the adequate safety measures. An offence punishable under Section 304 of IPC is clearly made out against the accused persons including the present Applicants. He therefore submitted to dismiss the present Applications. Learned Special Public Prosecutor Mr. R.C.Kodekar has sought to rely upon the following judgments in support of his submissions:

- (i) Neeru Yadav Vs. State of Uttar Pradesh & Anr. - (2014) 16 SCC 508
- (ii) Anil Kumar Yadav Vs. State (NCT of Delhi) & Anr. - (2018) 12 SCC 129
- (iii) Mahipal Vs. Rajesh Kumar alias Polia & Anr. - (2020) 2 SCC 118
- (iv) Alister Anthony Pareira Vs. State of Maharashtra - (2012) 2 SCC 648
- (v) Kanwar Singh Meena Vs. State of Rajasthan & Anr. - (2012) 12 SCC 180
- (vi) Prasanta Kumar Sarkar Vs. Ashis Chatterjee & Anr. - (2010) 14 SCC 496

8. Learned Advocate Mr. Mehul Dhonde appearing for the victims has opposed the present Applications. He reiterated the arguments of learned Special Public Prosecutor on the aspect of vicarious liability of the present Applicants. He further submitted that the lives of small children are the casualties in the alleged incident. There was no demarcation as regards the liabilities of the partners in the partnership firm, and therefore, the present Applicants were directly responsible for the acts of the partnership firm. He lastly submitted that the order passed by this Court in the present Applications will be looked upon by the other Courts while dealing with bail applications in

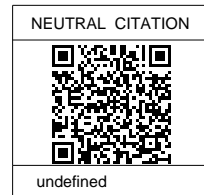


similar such cases, and therefore, this Court should be more watchful and careful while dealing with the Applications for regular bail in such cases. He therefore submitted to dismiss the present Applications. He has also sought to rely upon the following judgments in support of his submissions:

- (i) Suresh Kumar Vs. The Union Of India through Directorate of Enforcement - A.N.A No.4575 of 2022
- (ii) Rajesh Ranjan Yadav Alias Pappu Yadav Vs. CBI - (2007) 1 SCC 70
- (iii) Anbazhagan Vs. State represented by the Inspector of Police - 2023 SCC OnLine SC 857
- (iv) Sanjay Sreesha Vs. Serious Fraud Investigation Office Ministry of Corporate Affairs - 2022 (3) AKR 97

9. Heard learned Senior Advocates appearing on behalf of the respective parties and perused the record. The record shows that in the present offence, the investigation is over and charge sheet is filed.

9.1 The admitted facts between the parties are to the effect that the present Applicants were the partners to one M/s. Kotia Projects and each of them were having 5% share in the profit of the firm. The Applicants herein are sought to be implicated in the present offence on the basis of the principle of vicarious liability. It is sought to be contended by prosecution that the present Applicants being the partners of M/s. Kotia Projects, they were responsible and liable for the acts of partnership firm vide principle of vicarious liability. Several authorities have been cited from both the sides on the aspect of vicarious liabilities of the present Applicants for the unfortunate incident. However, this Court would not like to observe anything on the aspect of vicarious liability of the present Applicants as it will be the focal point of the trial so far as the present Applicants are concerned and both the sides may have to lead evidence to bring home their respective cases. This Court, therefore,



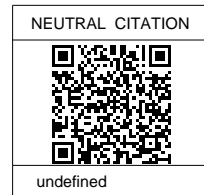
restrains itself at this stage from rendering any opinion on this aspect.

9.2 This Court also restrains itself from observing anything about invocation of an offence punishable under Section 304 of IPC.

10. Upon perusal of the entire record, there is nothing on record indicating about the direct involvement of any of the present Applicants in the present offence nor any of the Applicants have signed any of the agreements which were entered into between the respective parties for running the boating activity in the Harni Lake. There is also nothing on record to indicate that the present Applicants were ever part of any decision making process as regards the boating activity. All the Applicants before this Court are ladies. Some of the Applicants are behind the bars since 29.1.2024 whereas the other Applicants are behind the bars since 15.2.2024. Having regard to these aspects, this Court is inclined to allow the present Applications. This court has also considered the following aspects:

- (a) As per catena of decisions of Hon'ble Supreme Court, there are mainly three factors which are required to be considered by this court i.e. prima facie case, availability of the Applicants accused at the time of trial and tampering and hampering with the witnesses by the accused.
- (b) That the learned Advocate for the Applicants has submitted that the Applicants Accused are not likely to flee away.
- (c) That the Applicants are in custody since 29.01.2024 and 15.02.2024.
- (d) The law laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra v. C.B.I. Reported in (2012) 1 SCC 40.**

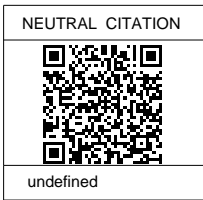
11. Having heard the learned Senior Advocates appearing on behalf of the respective parties and perusing the record produced in this case as well as taking into consideration the facts of the case, nature of allegations, gravity of



accusation, availability of the Applicants Accused at the time of trial etc. and the role attributed to the present Applicants, the present Application deserves to be allowed and accordingly stands allowed. This Court has also gone through the FIR and police papers and also the earlier order passed by the learned Sessions Court where the learned Sessions Judge has disallowed the bail Application at initial stage. The Applicants are ordered to be released on bail in connection with the aforesaid FIR on executing a personal bond of Rs.10,000/- each with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that they shall:

- (a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade from disclosing such facts to the Court or any Police Officer or tamper with the evidence.
- (b) maintain law and order and not to indulge in any criminal activities.
- (c) furnish the documentary proof of complete, correct and present address of residence to the Investigating Officer and to the Trial Court at the time of executing the bond and shall not change the residence without prior permission of the trial Court.
- (d) provide contact numbers as well as the contact numbers of the sureties before the Trial Court. In case of change in such numbers inform in writing immediately to the trial Court.
- (e) file an affidavit stating immovable properties whether self acquired or ancestral with description, location and present value of such properties before the Trial Court, if any.
- (f) not leave India without prior permission of the Trial Court
- (g) surrender passport, if any, to the Trial Court within a week. If the Applicants do not possess passport, shall file an Affidavit to that effect.

12. Bail bond to be executed before the Trial Court having jurisdiction to try the case. It would be open for the Trial Court concerned to give time to furnish



the solvency certificate if prayed for.

13. If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities will release the Applicants forthwith only if the Applicants are not required in connection with any other offence for the time being.

14. At the trial, the concerned trial Court shall not be influenced by the *prima facie* observations made by this Court in the present order.

15. Rule is made absolute. Direct service permitted.

(M. R. MENGDEY,J)

J.N.W