

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER  
CHARGESHEET) NO. 11059 of 2024**

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PARESHBHAI RAMANLAL SHAH  
Versus  
STATE OF GUJARAT

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Appearance:

MR N D NANAVATI, SENIOR ADVOCATE WITH  
MR CHETAN K PANDYA(1973) for the Applicant(s) No. 1  
MR RC KODEKAR, SPECIAL PUBLIC PROSECUTOR (1395) for the  
Respondent(s) No. 1  
APP for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY**

**Date : 30/09/2024**

**ORAL ORDER**

1. **RULE.** Learned APP waives service of rule for the respondent-State.
2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being **C.R.NO. 11196036240021 of 2024 registered with Harni Police Station, Vadodara.**
3. Learned Senior Advocate appearing on behalf of applicant has submitted that the applicant has not been named in the FIR. However, in the charge-sheet filed by the Investigating Agency, the applicant has been shown as an accused. The present applicant has never been the partner of M/s.Kotia Projects, who was assigned the contract of development of Lake Zone. Thus,

the applicant was not at all involved in the activity of Lake Zone and more particularly, the activity of boating. The applicant is sought to be arraigned as an accused in the present offence simply because he had signed certain documents in the capacity of witness. Except this, no other overtact has been attributed to the present applicant in commission of the offence.

3.1 Learned Senior Advocate has submitted that having regard to the over all facts of the case, at best, the offence, if any, made out against the accused is an offence punishable under Section 304(A) of the IPC and not an offence punishable under Section 304 of the IPC, as the element of intention or knowledge is conspicuously absent.

3.2 Learned Senior Advocate has submitted that the applicant has been arrested in connection with the present offence on 25.01.2024 and since then, he is in custody. The investigation of the offence is now over and charge-sheet has been filed. The prosecution has cited as many as 433 witnesses in the charge-sheet, and therefore, there is no possibility of commencement and conclusion of trial in the near future. He, therefore, submitted to allow the present application and enlarge the present applicant on bail subject to suitable conditions.

3.3 Learned Senior Advocate has sought to rely upon the following judgments in support of his submissions:-

**“1. *Sham Sunder & Ors. Vs. State of Haryana reported in (1989) 4 SCC 630 (Paragraph Nos.7 to 10)***

**2. *Harakchand Ratanchand Banthia & Ors. vs. Union of***

***India & Ors. reported in 1969 (2) SCC 166 (Paragraph No.24)***

***3. State of Haryana vs. Brij Lal Mittal & Ors. reported in (1998) 5 SCC 343 (Paragraph Nos.8 & 9)***

***4. S.K.Alagh vs. State of Uttar Pradesh & Ors. reported in (2008) 5 SCC 662 (Paragraph Nos.16, 19 & 20)***

***5. State of NCT of Delhi through Prosecuting Officer, Insecticides, Govt. of NCT, Delhi Vs. Rajiv Khurana reported in (2010) 11 SCC 469 (Paragraph Nos.12 & 20)***

***6. Shiv Kumar Jatia Vs. State of NCT of Delhi reported in (2019) 17 SCC 193 (Paragraph Nos.19 & 21)***

***7. Jaisukhbhai Odhavjibhai Bhalodiya (Patel) Vs. State of Gujarat & Anr in Criminal Appeal No.1763 of 2024 decided on 22.03.2024.***

***8.Kurban Hussein Mohamedalli Rangawalla Vs. State of Maharashtra reported in (1965) 2 SCR 622 (Paragraph No.3)”***

4. Learned Special Public Prosecutor has opposed the present application, inter alia, contending that the applicant is the main perpetrator of crime in question and he is the real master mind in the present offence.

4.1 Learned Special Public Prosecutor has submitted that the Vadodara Municipal Corporation had invited public expression of interest for execution of the work of development of Harni Monnath Lake at Harni, Vadodara on Public Private Partnership basis. In the Year 2017, the said contract was awarded to M/s. Kotia Projects. Initially, there were only 4 partners in M/s. Kotia Projects. However, subsequently, some partners from the aforesaid 4 partners had retired and the partnership firm had been re-constituted and the son of the present applicant viz. Vatsal Shah had been inducted as a partner in M/s. Kotia

Projects. The said M/s. Kotia Projects had subsequently entered into a tripartite agreement with M/s. Tristar Enterprise and Dolphin Entertainment to be the other parties, and thereafter, the said M/s. Kotia Projects had also entered into a sub-contract with Dolphin Entertainment. These contracts had been signed by the present applicant in the capacity of witness and the non-judicial stamp papers used for creation of these contracts were also purchased by the present applicant. In fact, the present applicant was looking after day to day affairs of M/s. Kotia Projects since the said M/s. Kotia Project started running into losses and all the policy decisions were taken by the present applicant.

4.2 Learned Special Public Prosecutor has submitted that as per the terms and conditions of the tender floated by the Vadodara Municipal Corporation, though it was not allowed for the party, who was awarded the contract to enter into any sub-contract with a third party, the said M/s. Kotia Projects had entered into a sub-contract, as discussed herein above and the work of administration of an activity of boating was assigned to Dolphin Entertainment behind the back of Vadodara Municipal Corporation. The said Dolphin Entertainment had no experience whatsoever as regard running an activity of boating in the lake. The investigation reveals that there were several lapses on the part of the agencies, who were involved with the activity of boating. Neither there were sufficient life jackets available on the fateful day nor were there any trained life guards available at the lake at the time of incident. The investigation also reveals that the boat in question was carrying more load into it than its load

carrying capacity, as there were 23 children and several teachers on the boat when the mishap happened. Thus, the boat was overloaded at the time of incident. The investigation also reveals that the CCTV Cameras installed at the lake site were also not functional. Thus, all the terms and conditions of the tender agreement had been violated by all the agencies involved in the present case.

4.3 Learned Special Public Prosecutor has taken this Court through various provisions of IPC to bring home the arguments that an offence punishable under Section 304 of the IPC is clearly made out against the accused persons.

4.4 Learned Special Public Prosecutor has submitted that having regard to the principle of vicarious liability, all the accused persons are equally liable for the incident and the offence in question. He, therefore, submitted to dismiss the present application.

5. Heard learned advocates for the parties and perused the material available on record. In the present case, the investigation is over and charge-sheet has been filed. The factual matrix leading to the filing of the present application are such that in the Year 2015, the Vadodara Municipal Corporation had invited public expression of interest from the interested parties for execution of the work of development of Harni Motnath Lake at Harni, Vadodara on Public Private Partnership basis. One M/s. Kotia Projects being interested, had also participated in the tender process. The said M/s. Kotia Projects was awarded the

contract of development of Harni Motnath Lake at Harni, Vadodara for 30 years on lease on 12.09.2016. Necessary agreement in that regard had been executed between the parties on 21.07.2017. Thereafter, a Tripartite Agreement was entered into between M/s. Kotia Projects, Tristar Enterprise and Dolphin Entertainment on 08.06.2023. Upon perusal of the said agreement, it appears that the said M/s. Kotia Projects had entered into a contract with M/s. Tristar Enterprise for running an activity of Adventure, Boating, Game Zone etc. and one Dolphin Entertainment had been subsequently added, as it wanted to run the said activity. On 24.02.2023, a Lease Agreement was also entered into between M/s. Kotia Projects and Dolphin Entertainment, whereby the activity of Boating and Game Zone had been given on lease by M/s. Kotia Projects to the Dolphin Entertainment. Upon perusal of the tender documents and the agreement entered into between the parties, it appears that it was not open for the party, who was awarded the contract, to enter into any sub-contract without prior permission of the Vadodara Municipal Corporation. It is the case on behalf of prosecution that the Vadodara Municipal Corporation was kept in dark by M/s. Kotia Projects, Tristar Enterprise and Dolphin Entertainment as regard tripartite agreement and an agreement of sub-lease.

6. On the fateful day i.e. on 18.01.2024, a local school of Vadodara had organized a Picnic at Harni Lake for its students. The children, who participated in the said picnic, had taken part in various activities being run at the lake zone and lastly, they had indulged into an activity of boating. The students were

divided in 3 batches for the activity of boating. The boat ride for the first two batches went on smoothly. However, at the time of 3<sup>rd</sup> ride, some mishap took place and the boat had capsized because of which 14 persons including 12 children had lost their lives. The investigation and inquiry, which had taken place thereafter had revealed several short comings, which were allegedly responsible for the said mishap to take place. The investigation reveals that there were no sufficient numbers of life jackets available and the students, who had boarded the boat, were not provided any life jacket. There were no trained life guards available at the lake zone at the time of accident and thirdly, the boat in question was overloaded at the time of incident, as there were 23 children and several teachers on board at the time of an accident. The Vadodara Municipal Corporation had incorporated various safety measures in the agreement, which were required to be complied with by the agency, who was assigned the work to ensure the safety of the public at large. The investigation papers reveal that the safety measures had been blatantly violated by the agency in question at the time of incident.

7. There is no dispute as regard the fact that the activity of boating was being run on behalf of the Vadodara Municipal Corporation. It is the argument on behalf of prosecution that the principle of vicarious liability would make all the accused persons equally liable for the offence. If this argument is to be accepted then the first one to be vicariously liable, would be the Vadodara Municipal Corporation and its office bearers from time to time. The Vadodara Municipal Corporation despite having

recommended several safety measures in the tender documents as well as subsequent agreements, does not appear to have bothered to inquire as to whether those safety measures were being rigorously complied with or not. The investigation carried out by the Investigating Agency is absolutely silent on the aspect of complicity and complacency of the officers of the Vadodara Municipal Corporation. The entire charge-sheet is conspicuously silent as regard the cold shoulder approach of the Vadodara Municipal Corporation on this issue. The FIR in question has been lodged by an employee of the Vadodara Municipal Corporation, which conveniently does not speak about the complacency of Vadodara Municipal Corporation and its officers. This Court is unable to digest that for all these times, the Vadodara Municipal Corporation was not aware about the fact that the agency, who was awarded the contract of development of Lake Zone, had entered into a sub-contract behind its back with another agency. The investigation reveals that on 02.11.2022, a letter was addressed by Vadodara Municipal Corporation to M/s Kotia Projects asking it to ensure to install CCTV Cameras at the Lake Zone, to take appropriate measures of safety in the activity of boating, to ensure that the experienced and trained life guards may available at the spot, to ensure that the boat did not carry the load more than its capacity and to ensure compliance of all the tender conditions. The said letter had been replied by M/s. Kotia Projects on 03.11.2022 giving assurance of fulfilling all the aforesaid requirements. There is nothing on record to indicate that the Vadodara Municipal Corporation had ever carried out any inspection over the site as regard fulfillment of aforesaid requirements. For the reasons best



known to the prosecution and investigating agency, despite this lackadaisical approach on the part of Vadodara Municipal Corporation and its officers, none of them has been arraigned as an accused in the present FIR.

8. The role attributed to the present applicant in the offence is to the effect that he was instrumental in a sub-contract as regard the boating activity being given to the Dolphin Entertainment. It is also alleged against the present applicant that his own son is also the partner with M/s. Kotia Projects. The applicant has been arrested in commission of the present offence on 25.01.2024. The aspect as to whether an offence punishable under Section 304 of the IPC is made out or not would require a detailed appreciation of evidence at the end of trial. The prosecution has cited as many as 433 witnesses. The other co-accused have been ordered to be enlarged on bail by this Court as well as by concerned Sessions Court. Considering the same, the trial of the offence is not likely to commence and conclude in near future.

9. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. Central Bureau of Investigation, reported in [2012]1 SCC 40.

10. In the facts and circumstances of the case and considering the nature of the 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.

11. Hence, the present application is allowed. The applicant IS ordered to be released on regular bail in connection with FIR being **C.R.NO. 11196036240021 of 2024 registered with Harni Police Station, Vadodara**, on executing a personal bond of Rs.50,000/- (Rupees Ten Thousand only) with one surety of the like amount to the satisfaction of the 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 injurious to the interest of the prosecution & shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;
- (c) surrender passport, if any, to the Trial Court within a week;
- (d) not leave the State of Gujarat without prior permission of the Trial Court concerned;
- (e) mark presence before the concerned Police Station once in a month for a period of six months between 11.00 a.m. and 2.00 p.m.;
- (f) furnish the present address of their residences 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 Trial Court;

12. 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.

13. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

14. At the trial, the 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.

15. Rule is made absolute to the aforesaid extent.

**Direct service** is permitted.

GIRISH

**(M. R. MENGDEY,J)**

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER  
CHARGESHEET) NO. 11877 of 2024**

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SHANTILAL ISHWARBHAI SOLANKI  
Versus  
STATE OF GUJARAT

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## Appearance:

MR N D NANAVATI, SENIOR ADVOCATE WITH  
MR YASH N NANAVATI(5626) for the Applicant(s) No. 1  
MR RC KODEKAR, SPECIAL PUBLIC PROSECUTOR (1395) for the  
Respondent(s) No. 1  
PUBLIC PROSECUTOR for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY**

**Date : 30/09/2024**

**ORAL ORDER**

1. **RULE.** Learned APP waives service of rule for the respondent-State.
2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being **C.R.NO. 11196036240021 of 2024 registered with Harni Police Station, Vadodara.**
3. Learned Senior Advocate appearing on behalf of applicant has submitted that the present applicant was working as Manager at Lake Zone and was employed by Dolphin Entertainment. Neither any specific role has been attributed to the present applicant in the charge-sheet filed by the Investigating Agency nor the present applicant was present at

the place at the time of incident. The applicant has been arrested in connection with the offence on 19.01.2024 and since then, he is in custody. The other accused persons have been considered for grant of bail either by this Court or by learned Sessions Court. He, therefore, submitted to allow the present application and enlarge the present applicant on bail subject to suitable conditions.

3.1 Learned Senior Advocate has sought to rely upon the following judgments in support of his submissions:-

***“1. Sham Sunder & Ors. Vs. State of Haryana reported in (1989) 4 SCC 630 (Paragraph Nos.7 to 10)***

***2. Harakchand Ratanchand Banthia & Ors. vs. Union of India & Ors. reported in 1969 (2) SCC 166 (Paragraph No.24)***

***3. State of Haryana vs. Brij Lal Mittal & Ors. reported in (1998) 5 SCC 343 (Paragraph Nos.8 & 9)***

***4. S.K.Alagh vs. State of Uttar Pradesh & Ors. reported in (2008) 5 SCC 662 (Paragraph Nos.16, 19 & 20)***

***5. State of NCT of Delhi through Prosecuting Officer, Insecticides, Govt. of NTC, Delhi Vs. Rajiv Khurana reported in (2010) 11 SCC 469 (Paragraph Nos.12 & 20)***

***6. Shiv Kumar Jatia Vs. State of NCT of Delhi reported in (2019) 17 SCC 193 (Paragraph Nos.19 & 21)***

***7. Jaisukhbhai Odhavjibhai Bhalodiya (Patel) Vs. State of Gujarat & Anr in Criminal Appeal No.1763 of 2024 decided on 22.03.2024.***

***8.Kurban Hussein Mohamedalli Rangawalla Vs. State of Maharashtra reported in (1965) 2 SCR 622 (Paragraph No.3)”***

4. Learned Special Public Prosecutor has opposed the present

application, inter alia, contending that the present applicant was working as Manager at the Lake Zone and was directly involved with the activity of boating. Being the Manager of the said activity, it was the primary duty of the applicant to see that all safety measures were in place. The investigation reveals that there were no sufficient safety equipments in place at the Lake Zone at the time of incident. Neither there were sufficient numbers of life jackets to be given to the children at the time of boating nor there were any trained life guards available at the place.

4.1 Learned Special Public Prosecutor has taken this Court through various provisions of IPC to bring home the arguments that an offence punishable under Section 304 of the IPC is clearly made out against the accused persons. He, therefore, submitted to dismiss the present application.

5. Heard learned advocates for the parties and perused the material available on record. In present case, the investigation is over and charge-sheet has been filed. The factual matrix leading to the filing of the present application are such that in the Year 2015, the Vadodara Municipal Corporation had invited public expression of interest from the interested parties for execution of the work of development of Harni Motnath Lake at Harni, Vadodara on Public Private Partnership basis. One M/s. Kotia Projects being interested, had also participated in the tender process. The said M/s. Kotia Projects was awarded the contract of development of Harni Motnath Lake at Harni, Vadodara for 30 years on lease on 12.09.2016. Necessary agreement in that

regard had been executed between the parties on 21.07.2017. Thereafter, a Tripartite Agreement was entered into between M/s. Kotia Projects, Tristar Enterprise and Dolphin Entertainment on 08.06.2023. Upon perusal of the said agreement, it appears that the said M/s. Kotia Projects had entered into a contract with M/s. Tristar Enterprise for running an activity of Adventure, Boating, Game Zone etc. and one Dolphin Entertainment had been subsequently added, as it wanted to run the said activity. On 24.02.2023, a Lease Agreement was also entered into between M/s. Kotia Projects and Dolphin Entertainment, whereby the activity of Boating and Game Zone had been given on lease by M/s. Kotia Projects to the Dolphin Entertainment. Upon perusal of the tender documents and the agreement entered into between the parties, it appears that it was not open for the party, who was awarded the contract to enter into any sub-contract without prior permission of the Vadodara Municipal Corporation. It is the case on behalf of prosecution that the Vadodara Municipal Corporation was kept in dark by M/s. Kotia Projects, Tristar Enterprise and Dolphin Entertainment as regard tripartite agreement and an agreement of sub-lease.

6. On the fateful day i.e. on 18.01.2024, a local school of Vadodara had organized a Picnic at Harni Lake for its students. The children, who participated in the said picnic, had taken part in various activities being run at the lake zone and lastly, they had indulged into an activity of boating. The students were divided in 3 batches for the activity of boating. The boat ride for the first two batches went on smoothly. However, at the time of

3<sup>rd</sup> ride, some mishap took place and the boat had capsized because of which 14 persons including 12 children had lost their lives. The investigation and inquiry, which had taken place thereafter had revealed several short comings, which were allegedly responsible for the said mishap to take place. The investigation reveals that there were no sufficient numbers of life jackets available and the students, who had boarded the boat, were not provided any life jacket. There were no trained life guards available at the lake zone at the time of accident and thirdly, the boat in question was overloaded at the time of incident, as there were 23 children and several teachers on board at the time of an accident. The Vadodara Municipal Corporation had incorporated various safety measures in the agreement, which were required to be complied with by the agency, who was assigned the work to ensure the safety of public at large. The investigation papers reveal that the safety measures had been blatantly violated by the agency in question at the time of incident.

7. There is no dispute as regard the fact that the activity of boating was being run on behalf of the Vadodara Municipal Corporation. It is the argument on behalf of prosecution that the principle of vicarious liability would make all the accused persons equally liable for the offence. If this argument is to be accepted then the first one to be vicariously liable, would be the Vadodara Municipal Corporation and its office bearers from time to time. The Vadodara Municipal Corporation, despite having recommended several safety measures in the tender documents as well as subsequent agreements, does not appear to have



bothered to inquire as to whether those safety measures were being rigorously complied with or not. The investigation carried out by the Investigating Agency is absolutely silent on the aspect of complicity and complacency of the officers of the Vadodara Municipal Corporation. The entire charge-sheet is conspicuously silent as regard the cold shoulder approach of the Vadodara Municipal Corporation on this issue. The FIR in question has been lodged by an employee of the Vadodara Municipal Corporation, which conveniently does not speak about the complacency of Vadodara Municipal Corporation and its officers. This Court is unable to digest that for all these times, the Vadodara Municipal Corporation was not aware about the fact that the agency, who was awarded the contract of development of Lake Zone had entered into a sub-contract behind its back with another agency. The investigation reveals that on 02.11.2022, a letter was addressed by Vadodara Municipal Corporation to M/s Kotia Projects asking it to ensure to install CCTV Cameras at the Lake Zone, to take appropriate measures of safety in the activity of boating, to ensure that the experienced and trained life guards may available at the spot, to ensure that the boat did not carry the load more than its capacity and to ensure compliance of all the tender conditions. The said letter had been replied by M/s. Kotia Projects on 03.11.2022 giving assurance of fulfilling all the aforesaid requirements. There is nothing on record to indicate that the Vadodara Municipal Corporation had ever carried out any inspection over the site as regard fulfillment of aforesaid requirements. For the reasons best known to the prosecution and investigating agency, despite this lackadaisical approach on the part of Vadodara Municipal

Corporation and its officers, none to them has been arraigned as an accused in the present FIR.

8. The role attributed to the present applicant in the offence is to the effect that he was working as Manager at Lake Zone and was employed by Dolphin Entertainment. Neither any specific role has been attributed to the present applicant in the charge-sheet filed by the Investigating Agency nor the present applicant was present at the place at the time of incident. The applicant has been arrested in commission of offence on 19.01.2024 and since then, he is in custody. The other accused persons have been considered for grant of bail either by this Court or by concerned Sessions Judge. The aspect as to whether an offence punishable under Section 304 of the IPC is made out or not would require a detailed appreciation of evidence at the end of trial. The prosecution has cited as many as 433 witnesses. Considering the same, the trial of the offence is not likely to commence and conclude in near future.

9. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. Central Bureau of Investigation, reported in [2012]1 SCC 40.

10. In the facts and circumstances of the case and considering the nature of the 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.

11. Hence, the present application is allowed. The applicant is

ordered to be released on regular bail in connection with FIR being **C.R.NO. 11196036240021 of 2024 registered with Harni Police Station, Vadodara**, on executing a personal bond of Rs.50,000/- (Rupees Ten Thousand only) with one surety of the like amount to the satisfaction of the 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 injurious to the interest of the prosecution & shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;
- (c) surrender passport, if any, to the Trial Court within a week;
- (d) not leave the State of Gujarat without prior permission of the Trial Court concerned;
- (e) mark presence before the concerned Police Station once in a month for a period of six months between 11.00 a.m. and 2.00 p.m.;
- (f) furnish the present address of their residences 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 Trial Court;

12. 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.

13. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

14. At the trial, the 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.

15. Rule is made absolute to the aforesaid extent.

**Direct service** is permitted.

**(M. R. MENGDEY,J)**

GIRISH

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER  
CHARGESHEET) NO. 12091 of 2024**

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NILESH KANTILAL JAIN  
Versus  
STATE OF GUJARAT

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Appearance:

MR ASHISH M DAGLI(2203) for the Applicant(s) No. 1

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

PUBLIC PROSECUTOR for the Respondent(s) No. 1

=====

**CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY**

**Date : 30/09/2024**

**ORAL ORDER**

1. **RULE.** Learned APP waives service of rule for the respondent-State.

2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being **C.R.NO. 11196036240021 of 2024 registered with Harni Police Station, Vadodara.**

3. Learned Advocate appearing on behalf of applicant has submitted that the applicant has not been named in the FIR nor any specific role is attributed to him in the charge-sheet filed by the Investigating Agency. The present applicant was not responsible for day to day activity of the Lake Zone. The applicant happens to be the partner in Dolphin Entertainment.

3.1 Learned Advocate appearing for the applicant has submitted that the charge-sheet papers reveal that there were

sufficient numbers of life jackets available on the Lake Zone on the day of incident. However, the children loaded on the boat preferred not to wear those life jackets though they were offered to them.

3.2 Learned Advocate appearing for the applicant has submitted that by no stretch of imagination, the applicant and the other accused can be said to have committed an offence punishable under Section 304 of the IPC. At best, the applicant and the other co-accused can be said to be negligent in running the activity of boating which at best would attract an offence punishable under Section 304(A) of the IPC, which is punishable with an imprisonment for 2 years. The applicant has been arrested in connection with the present offence on 29.01.2024 and since then, he is in custody. He, therefore, submitted to allow the present application and enlarge the present applicant on bail subject to suitable conditions.

4. Learned Special Public Prosecutor has opposed the present application, inter alia, contending that the applicant is the main perpetrator of crime in question and he is the real master mind in the present offence.

4.1 Learned Special Public Prosecutor has submitted that the Vadodara Municipal Corporation had invited public expression of interest for execution of the work of development of Harni Monnath Lake at Harni, Vadodara on Public Private Partnership basis. In the Year 2017, the said contract was awarded to M/s. Kotia Projects. The said M/s. Kotia Projects had subsequently

entered into a tripartite agreement with M/s. Tristar Enterprise and Dolphin Entertainment to be the other parties, and thereafter, the said M/s. Kotia Projects had also entered into a sub-contract with Dolphin Entertainment.

4.2 Learned Special Public Prosecutor has submitted that as per the terms and conditions of the tender floated by the Vadodara Municipal Corporation, though it was not allowed for the party, who was awarded the contract to enter into any sub-contract with a third party, the said M/s. Kotia Projects had entered into a sub-contract, as discussed herein above and the work of administration of an activity of boating was assigned to Dolphin Entertainment behind the back of Vadodara Municipal Corporation. The said Dolphin Entertainment had no experience whatsoever as regard running an activity of boating in the lake. The investigation reveals that there were several lapses on the part of the agencies, who were involved with the activity of boating. Neither there were sufficient life jackets available on the fateful day nor were there any trained life guards available at the lake at the time of incident. The investigation also reveals that the boat in question was carrying more load into it than its load carrying capacity, as there were 23 children and several teachers on the board when the mishap happened. Thus, the boat was overloaded at the time of incident. The investigation also reveals that the CCTV Cameras installed at the lake side were also not functional. Thus, all the terms and conditions of the tender agreement had been violated by all the agencies involved in the present case.

4.3 Learned Special Public Prosecutor has submitted that having regard to the principle of vicarious liability, all the accused persons are equally liable for the incident and the offence in question. He, therefore, submitted to dismiss the present application.

5. Heard learned advocates for the parties and perused the material available on record. In present case, the investigation is over and charge-sheet has been filed. The factual matrix leading to the filing of the present application are such that in the Year 2015, the Vadodara Municipal Corporation had invited public expression of interest from the interested parties for execution of the work of development of Harni Motnath Lake at Harni, Vadodara on Public Private Partnership basis. One M/s. Kotia Projects being interested, had also participated in the tender process. The said M/s. Kotia Projects was awarded the contract of development of Harni Motnath Lake at Harni, Vadodara for 30 years on lease on 12.09.2016. Necessary agreement in that regard had been executed between the parties on 21.07.2017. Thereafter, a Tripartite Agreement was entered into between M/s. Kotia Projects, Tristar Enterprise and Dolphin Entertainment on 08.06.2023. Upon perusal of the said agreement, it appears that the said M/s. Kotia Projects had entered into a contract with M/s. Tristar Enterprise for running an activity of Adventure, Boating, Game Zone etc. and one Dolphin Entertainment had been subsequently added, as it wanted to run the said activity. On 24.02.2023, a Lease Agreement was also entered into between M/s. Kotia Projects and Dolphin Entertainment, whereby the activity of Boating and



Game Zone had been given on lease by M/s. Kotia Projects to the Dolphin Entertainment. Upon perusal of the tender documents and the agreement entered into between the parties, it appears that it was not open for the party, who was awarded the contract to enter into any sub-contract without prior permission of the Vadodara Municipal Corporation. It is the case on behalf of prosecution that the Vadodara Municipal Corporation was kept in dark by M/s. Kotia Projects, Tristar Enterprise and Dolphin Entertainment as regard tripartite agreement and an agreement of sub-lease.

6. On the fateful day i.e. on 18.01.2024, a local school of Vadodara had organized a Picnic at Harni Lake for its students. The children, who participated in the said picnic, had taken part in various activities being run at the lake zone and lastly, they had indulged into an activity of boating. The students were divided in 3 batches for the activity of boating. The boat ride for the first two batches went on smoothly. However, at the time of 3<sup>rd</sup> ride, some mishap took place and the boat had capsized because of which 14 persons including 12 children had lost their lives. The investigation and inquiry, which had taken place thereafter had revealed several short comings, which were allegedly responsible for the said mishap to take place. The investigation reveals that there were no sufficient numbers of life jackets available and the students, who had boarded the boat, were not provided any life jacket. There were no trained life guards available at the lake zone at the time of accident and thirdly, the boat in question was overloaded at the time of incident, as there were 23 children and several teachers on

board at the time of an accident. The Vadodara Municipal Corporation had incorporated various safety measures in the agreement, which were required to be complied with by the agency, who was assigned the work to ensure the safety of public at large. The investigation papers reveal that the safety measures had been blatantly violated by the agency in question at the time of incident.

7. There is no dispute as regard the fact that the activity of boating was being run on behalf of the Vadodara Municipal Corporation. It is the argument on behalf of prosecution that the principle of vicarious liability would make all the accused persons equally liable for the offence. If this argument is to be accepted, then the first one to be vicariously liable, would be the Vadodara Municipal Corporation and its office bearers from time to time. The Vadodara Municipal Corporation, despite having recommended several safety measures in the tender documents as well as subsequent agreements, does not appear to have bothered to inquire as to whether those safety measures were being rigorously complied with or not. The investigation carried out by the Investigating Agency is absolutely silent on the aspect of complicity and complacency of the officers of the Vadodara Municipal Corporation. The entire charge-sheet is conspicuously silent as regard the cold shoulder approach of the Vadodara Municipal Corporation on this issue. The FIR in question has been lodged by an employee of the Vadodara Municipal Corporation, which conveniently does not speak about the complacency of Vadodara Municipal Corporation and its officers. This Court is unable to digest that for all these times, the

Vadodara Municipal Corporation was not aware about the fact that the agency, who was awarded the contract of development of Lake Zone had entered into a sub-contract behind its back with another agency. The investigation reveals that on 02.11.2022, a letter was addressed by Vadodara Municipal Corporation to M/s Kotia Projects asking it to ensure to install CCTV Cameras at the Lake Zone, to take appropriate measures of safety in the activity of boating, to ensure that the experined and trained life guards may available at the spot, to ensure that the boat did not carry the load more than its capacity and to ensure compliance of all the tender conditions. The said letter had been replied by M/s. Kotia Projects on 03.11.2022 giving assurance of fulfilling all the aforesaid requirements. There is nothing on record to indicate that the Vadodara Municipal Corporation had ever carried out any inspection over the site as regard fulfillment of aforesaid requirements. For the reasons best known to the prosecution and investigating agency, despite this lackadaisical approach on the part of Vadodara Municipal Corporation and its officers, none to them has been arraigned as an accused in the present FIR.

8. The role attributed to the present applicant in the offence is to the effect that he was the partner in Dolphin Entertainment. The applicant has been arrested in commission of the present offence on 29.01.2024. The aspect as to whether an offence punishable under Section 304 of the IPC is made out or not would require a detailed appreciation of evidence at the end of trial. The prosecution has cited as many as 433 witnesses. The other co-accused have been ordered to be

enlarged on bail by this Court as well as by concerned Sessions Court. Considering the same, the trial of the offence is not likely to commence and conclude in near future.

9. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. Central Bureau of Investigation, reported in [2012]1 SCC 40.

10. In the facts and circumstances of the case and considering the nature of the 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.

11. Hence, the present application is allowed. The applicant IS ordered to be released on regular bail in connection with FIR being **C.R.NO. 11196036240021 of 2024 registered with Harni Police Station, Vadodara**, on executing a personal bond of Rs.50,000/- (Rupees Ten Thousand only) with one surety of the like amount to the satisfaction of the 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 injurious to the interest of the prosecution & shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;
- (c) surrender passport, if any, to the Trial Court within a week;
- (d) not leave the State of Gujarat without prior

permission of the Trial Court concerned;

- (e) mark presence before the concerned Police Station once in a month for a period of six months between 11.00 a.m. and 2.00 p.m.;
- (f) furnish the present address of their residences 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 Trial Court;

12. 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.

13. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

14. At the trial, the 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.

15. Rule is made absolute to the aforesaid extent.  
**Direct service** is permitted.

GIRISH

**(M. R. MENGDEY,J)**

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER CHARGESHEET) NO. 13354 of 2024**

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VATSAL PARESHBHAI SHAH  
Versus  
STATE OF GUJARAT

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## Appearance:

MR N D NANAVATI, SENIOR ADVOCATE WITH  
MR CHETAN K PANDYA(1973) for the Applicant(s) No. 1  
MR RC KODEKAR, SPECIAL PUBLIC PROSECUTOR (1395) for the  
Respondent(s) No. 1  
PUBLIC PROSECUTOR for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY**

**Date : 30/09/2024**

**ORAL ORDER**

1. **RULE.** Learned APP waives service of rule for the respondent-State.
2. The present application is filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 for regular bail in connection with FIR being **C.R.NO. 11196036240021 of 2024 registered with Harni Police Station, Vadodara.**
3. Learned Senior Advocate appearing on behalf of applicant has submitted that the applicant is the partner with M/s. Kotia Projects and has been arraigned as an accused on the basis of principle of vicarious liability. The applicant has not played any role whatsoever in commission of the offence in question. Moreover, the offence punishable under Section 304 of the IPC is

not made out against the accused persons including the present applicant. The other partners of M/s. Kotia Projects have been granted bail either by this Court or by concerned Sessions Court. He, therefore, submitted to allow the present application and enlarge the present applicant on bail subject to suitable conditions.

4. Learned Senior Advocate has sought to rely upon the following judgments in support of his submissions:-

**“1. Sham Sunder & Ors. Vs. State of Haryana reported in (1989) 4 SCC 630 (Paragraph Nos.7 to 10)**

**2. Harakchand Ratanchand Banthia & Ors. vs. Union of India & Ors. reported in 1969 (2) SCC 166 (Paragraph No.24)**

**3. State of Haryana vs. Brij Lal Mittal & Ors. reported in (1998) 5 SCC 343 (Paragraph Nos.8 & 9)**

**4. S.K.Alagh vs. State of Uttar Pradesh & Ors. reported in (2008) 5 SCC 662 (Paragraph Nos.16, 19 & 20)**

**5. State of NCT of Delhi through Prosecuting Officer, Insecticides, Govt. of NCT, Delhi Vs. Rajiv Khurana reported in (2010) 11 SCC 469 (Paragraph Nos.12 & 20)**

**6. Shiv Kumar Jatia Vs. State of NCT of Delhi reported in (2019) 17 SCC 193 (Paragraph Nos.19 & 21)**

**7. Jaisukhbhai Odhavjibhai Bhalodiya (Patel) Vs. State of Gujarat & Anr in Criminal Appeal No.1763 of 2024 decided on 22.03.2024.**

**8.Kurban Hussein Mohamedalli Rangawalla Vs. State of Maharashtra reported in (1965) 2 SCR 622 (Paragraph No.3)”**

5. Learned Special Public Prosecutor has opposed the present application, inter alia, contending that the applicant herein was inducted as a partner with M/s. Kotia Projects in the Year 2017

after retirement of the erstwhile partners. Thereafter, the applicant herein has been managing the day to day affairs of M/s. Kotia Projects. It was the present applicant, who had signed the agreement, which was entered into between the Vadodara Municipal Corporation and M/s. Kotia Projects. Subsequently, the present applicant had entered into a tripartite agreement between M/s. Kotia Projects, M/s. Tristar Enterprise and Dolphin Entertainment on behalf of M/s. Kotia Projects. The applicant had also entered into a sub-contract with Dolphin Entertainment and the activity of boating had been sublet by M/s. Kotia Projects to the said Dolphin Entertainment.

5.1 Learned Special Public Prosecution has submitted that the terms and conditions of the tender did not allow M/s. Kotia Projects to enter into any sub-contract without permission of the Vadodara Municipal Corporation and despite the same, it was the present applicant, who had entered into various agreements, as stated herein above.

5.2 Learned Special Public Prosecutor has submitted that the inquiry and investigation gone into after the incident reveals that Neither there were sufficient safety equipment nor there were any life guards available on the spot. The staff, which was employed by the concerned agency was also not trained for carrying out any boating activity. Thus, there was a gross violation of the terms of the contract committed by all the accused persons including the present applicant, which had resulted into an unfortunate incident because of which 14 persons had lost their lives.



5.3 Learned Special Public Prosecutor has submitted that the accused including the present applicant were having knowledge that carrying an activity of boating without required safety measures may result in loss of lives, which is sufficient for invocation of an offence punishable under Section 304 of the IPC against them. He, therefore, submitted to dismiss the present application.

6. Heard learned advocates for the parties and perused the material available on record. In present case, the investigation is over and charge-sheet has been filed. The factual matrix leading to THE filing of the present application are such that in the Year 2015, the Vadodara Municipal Corporation had invited public expression of interest from the interested parties for execution of the work of development of Harni Motnath Lake at Harni, Vadodara on Public Private Partnership basis. One M/s. Kotia Projects being interested, had also participated in the tender process. The said M/s. Kotia Projects was awarded the contract of development of Harni Motnath Lake at Harni, Vadodara for 30 years on lease on 12.09.2016. Necessary agreement in that regard had been executed between the parties on 21.07.2017. Thereafter, a Tripartite Agreement was entered into between M/s. Kotia Projects, Tristar Enterprise and Dolphin Entertainment on 08.06.2023. Upon perusal of the said agreement, it appears that the said M/s. Kotia Projects had entered into a contract with M/s. Tristar Enterprise for running an activity of Adventure, Boating, Game Zone etc. and one Dolphin Entertainment had been subsequently added, as it

wanted to run the said activity. On 24.02.2023, a Lease Agreement was also entered into between M/s. Kotia Projects and Dolphin Entertainment, whereby the activity of Boating and Game Zone had been given on lease by M/s. Kotia Projects to the Dolphin Entertainment. Upon perusal of the tender documents and the agreement entered into between the parties, it appears that it was not open for the party, who was awarded the contract to enter into any sub-contract without prior permission of the Vadodara Municipal Corporation. It is the case on behalf of prosecution that the Vadodara Municipal Corporation was kept in dark by M/s. Kotia Projects, Tristar Enterprise and Dolphin Entertainment as regard tripartite agreement and an agreement of sub-lease.

7. On the fateful day i.e. on 18.01.2024, a local school of Vadodara had organized a Picnic at Harni Lake for its students. The children, who participated in the said picnic, had taken part in various activities being run at the lake zone and lastly, they had indulged into an activity of boating. The students were divided in 3 batches for the activity of boating. The boat ride for the first two batches went on smoothly. However, at the time of 3<sup>rd</sup> ride, some mishap took place and the boat had capsized because of which 14 persons including 12 children had lost their lives. The investigation and inquiry, which had taken place thereafter had revealed several short comings, which were allegedly responsible for the said mishap to take place. The investigation reveals that there were no sufficient numbers of life jackets available and the students, who had boarded the boat, were not provided any life jacket. There were no trained life

guards available at the lake zone at the time of accident and thirdly, the boat in question was overloaded at the time of incident, as there were 23 children and several teachers on board at the time of an accident. The Vadodara Municipal Corporation had incorporated various safety measures in the agreement, which were required to be complied with by the agency, who was assigned the work to ensure the safety of public at large. The investigation papers reveal that the safety measures had been blatantly violated by the agency in question at the time of incident.

8. There is no dispute as regard the fact that the activity of boating was being run on behalf of the Vadodara Municipal Corporation. It is the argument on behalf of prosecution that the principle of vicarious liability would make all the accused persons equally liable for the offence. If this argument is to be accepted, then the first one to be vicariously liable, would be the Vadodara Municipal Corporation and its office bearers from time to time. The Vadodara Municipal Corporation, despite having recommended several safety measures in the tender documents as well as subsequent agreements, does not appear to have bothered to inquire as to whether those safety measures were being rigorously complied with or not. The investigation carried out by the Investigating Agency is absolutely silent on the aspect of complicity and complacency of the officers of the Vadodara Municipal Corporation. The entire charge-sheet is conspicuously silent as regard the cold shoulder approach of the Vadodara Municipal Corporation on this issue. The FIR in question has been lodged by an employee of the Vadodara Municipal

Corporation, which conveniently does not speak about the complacency of Vadodara Municipal Corporation and its officers. This Court is unable to digest that for all these times, the Vadodara Municipal Corporation was not aware about the fact that the agency, who was awarded the contract of development of Lake Zone had entered into a sub-contract behind its back with another agency. The investigation reveals that on 02.11.2022, a letter was addressed by Vadodara Municipal Corporation to M/s Kotia Projects asking it to ensure to install CCTV Cameras at the Lake Zone, to take appropriate measures of safety in the activity of boating, to ensure that the experineced and trained life guards may available at the spot, to ensure that the boat did not carry the load more than its capacity and to ensure compliance of all the tender conditions. The said letter had been replied by M/s. Kotia Projects on 03.11.2022 giving assurance of fulfilling all the aforesaid requirements. There is nothing on record to indicate that the Vadodara Municipal Corporation had ever carried out any inspection over the site as regard fulfillment of aforesaid requirements. For the reasons best known to the prosecution and investigating agency, despite this lackadaisical approach on the part of Vadodara Municipal Corporation and its officers, none to them has been arraigned as an accused in the present FIR.

9. The role attributed to the present applicant in the offence is to the effect that he is the partner with M/s. Kotia Projects and has been arraigned as an accused on the basis of principle of vicarious liability. The applicant has not played any role whatsoever in commission of the offence in question. The

applicant has been arrested in commission of the present offence on 15.02.2024. The aspect as to whether an offence punishable under Section 304 of the IPC is made out or not would require a detailed appreciation of evidence at the end of trial. The prosecution has cited as many as 433 witnesses. The other co-accused have been ordered to be enlarged on bail by this Court as well as by concerned Sessions Court. Considering the same, the trial of the offence is not likely to commence and conclude in near future.

10. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. Central Bureau of Investigation, reported in [2012]1 SCC 40.

11. In the facts and circumstances of the case and considering the nature of the 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.

12. Hence, the present application is allowed. The applicant IS ordered to be released on regular bail in connection with FIR being **C.R.NO. 11196036240021 of 2024 registered with Harni Police Station, Vadodara**, on executing a personal bond of Rs.50,000/- (Rupees Ten Thousand only) with one surety of the like amount to the satisfaction of the 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 injurious to the interest of

the prosecution & shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;

- (c) surrender passport, if any, to the Trial Court within a week;
- (d) not leave the State of Gujarat without prior permission of the Trial Court concerned;
- (e) mark presence before the concerned Police Station once in a month for a period of six months between 11.00 a.m. and 2.00 p.m.;
- (f) furnish the present address of their residences 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 Trial Court;

13. 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.

14. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

15. At the trial, the 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.

16. Rule is made absolute to the aforesaid extent.  
**Direct service** is permitted.

GIRISH

**(M. R. MENGDEY,J)**

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER CHARGESHEET) NO. 15349 of 2024**

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NAYAN PRAVINBHAI GOHIL  
Versus  
STATE OF GUJARAT

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## Appearance:

KHYATI A CHUGH(10132) for the Applicant(s) No. 1  
MR. PARTH H BHATT(6381) for the Applicant(s) No. 1  
MR RC KODEKAR, SPECIAL PUBLIC PROSECUTOR (1395) for the  
Respondent(s) No. 1  
PUBLIC PROSECUTOR for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY**

**Date : 30/09/2024**

**ORAL ORDER**

1. **RULE.** Learned APP waives service of rule for the respondent-State.
2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being **C.R.NO. 11196036240021 of 2024 registered with Harni Police Station, Vadodara.**
3. Learned Advocate appearing on behalf of applicant has submitted that the present applicant was working as a Boat Navigator with the Dolphin Entertainment and at the time of incident, he was driving the boat, which had capsized. It was not the duty of the present applicant to provide for any safety measures to the passengers of the boat.

3.1 Learned Advocate appearing for the applicant has submitted that the statements of the students recorded during the course of investigation, who were riding the boat at the relevant time indicate that the boat in question had not capsized because of any overloading, but a Teacher, who was on board, stood up for taking a selfie photograph, because of which some imbalance was created which had resulted into an untoward incident.

3.2 Learned Advocate appearing for the applicant has submitted that the present applicant, after the boat capsized, had made attempts to rescue children from drowning and had also rescued several such students. This conduct on the part of the present applicant would indicate that the present applicant was not responsible for an unfortunate incident.

3.3 Learned Advocate appearing for the applicant has submitted that having regard to the over all facts of the case, at best, the offence, if any, made out against the accused is an offence punishable under Section 304(A) of the IPC and not an offence punishable under Section 304 of the IPC, as the element of intention or knowledge is conspicuously absent against present applicant. He, therefore, submitted to allow the present application and enlarge the present applicant on bail subject to suitable conditions.

3.4 Learned Advocate has sought to rely upon the following judgments in support of his submissions:-



**“1. Nitin Chandra Somanath Raval Vs. State of Gujarat & Ors. reported in (2019) 14 SCC 676.**

**2. Sanjay Chandra Vs. Central Bureau of Investigation reported in (2012) 1 SCC 40.**

**3. Sanjay Kumar & Ors. Vs. Central Buruau of Investigation reported in (2012) 1 SCC 65.”**

4. Learned Special Public Prosecutor has opposed the present application, inter alia, contending that the there were 23 students and several Teachers on board at the time of incident. Thus, the boat was overloaded at the time of incident. The papers of investigation would also reveal that the students were made to sit upon the deck of the boat, which had created an imbalance, which was responsible for the occurrence of the incident.

4.1 Learned Special Public Prosecutor has submitted that it was brought to the notice of the present applicant by the Teachers, who were on board that the boat was being overloaded and that the children having been seated on the deck area, would create an imbalance to which the applicant had replied that he was having experience of driving the boat and knew how to balance the boat. The applicant, though was not trained for driving the boat, had ventured into the same and that too without fulfilling any safety norms. It was the primary duty of the present applicant to ask the passengers on board to wear the safety jackets. The applicant herein had failed in his duty of ensuring safety measures.

4.2 Learned Special Public Prosecutor has taken this Court through various provisions of IPC to bring home the arguments that an offence punishable under Section 304 of the IPC is clearly made out against the accused persons.

4.3 Learned Special Public Prosecutor has submitted that having regard to the principle of vicarious liability, all the accused persons are equally liable for the incident and the offence in question. He, therefore, submitted to dismiss the present application.

5. Heard learned advocates for the parties and perused the material available on record. In present case, the investigation is over and charge-sheet has been filed. The factual matrix leading to the filing of the present application are such that in the Year 2015, the Vadodara Municipal Corporation had invited public expression of interest from the interested parties for execution of the work of development of Harni Motnath Lake at Harni, Vadodara on Public Private Partnership basis. One M/s. Kotia Projects being interested, had also participated in the tender process. The said M/s. Kotia Projects was awarded the contract of development of Harni Motnath Lake at Harni, Vadodara for 30 years on lease on 12.09.2016. Necessary agreement in that regard had been executed between the parties on 21.07.2017. Thereafter, a Tripartite Agreement was entered into between M/s. Kotia Projects, Tristar Enterprise and Dolphin Entertainment on 08.06.2023. Upon perusal of the said agreement, it appears that the said M/s. Kotia Projects had entered into a contract with M/s. Tristar Enterprise for running

an activity of Adventure, Boating, Game Zone etc. and one Dolphin Entertainment had been subsequently added, as it wanted to run the said activity. On 24.02.2023, a Lease Agreement was also entered into between M/s. Kotia Projects and Dolphin Entertainment, whereby the activity of Boating and Game Zone had been given on lease by M/s. Kotia Projects to the Dolphin Entertainment. Upon perusal of the tender documents and the agreement entered into between the parties, it appears that it was not open for the party, who was awarded the contract, to enter into any sub-contract without prior permission of the Vadodara Municipal Corporation. It is the case on behalf of prosecution that the Vadodara Municipal Corporation was kept in dark by M/s. Kotia Projects, Tristar Enterprise and Dolphin Entertainment as regard tripartite agreement and an agreement of sub-lease.

6. On the fateful day i.e. on 18.01.2024, a local school of Vadodara had organized a Picnic at Harni Lake for its students. The children, who participated in the said picnic, had taken part in various activities being run at the lake zone and lastly, they had indulged into an activity of boating. The students were divided in 3 batches for the activity of boating. The boat ride for the first two batches went on smoothly. However, at the time of 3<sup>rd</sup> ride, some mishap took place and the boat had capsized because of which 14 persons including 12 children had lost their lives. The investigation and inquiry, which had taken place thereafter had revealed several short comings, which were allegedly responsible for the said mishap to take place. The investigation reveals that there were no sufficient numbers of life

jackets available and the students, who had boarded the boat, were not provided any life jacket. There were no trained life guards available at the lake zone at the time of accident and thirdly, the boat in question was overloaded at the time of incident, as there were 23 children and several teachers on board at the time of an accident. The Vadodara Municipal Corporation had incorporated various safety measures in the agreement, which were required to be complied with by the agency, who was assigned the work to ensure the safety of public at large. The investigation papers reveal that the safety measures had been blatantly violated by the agency in question at the time of incident.

7. There is no dispute as regard the fact that the activity of boating was being run on behalf of the Vadodara Municipal Corporation. It is the argument on behalf of prosecution that the principle of vicarious liability would make all the accused persons equally liable for the offence. If this argument is to be accepted then the first one to be vicariously liable, would be the Vadodara Municipal Corporation and its office bearers from time to time. The Vadodara Municipal Corporation, despite having recommended several safety measures in the tender documents as well as subsequent agreements, does not appear to have bothered to inquire as to whether those safety measures were being rigorously complied with or not. The investigation carried out by the Investigating Agency is absolutely silent on the aspect of complicity and complacency of the officers of the Vadodara Municipal Corporation. The entire charge-sheet is conspicuously silent as regard the cold shoulder approach of the Vadodara

Municipal Corporation on this issue. The FIR in question has been lodged by an employee of the Vadodara Municipal Corporation, which conveniently does not speak about the complacency of Vadodara Municipal Corporation and its officers. This Court is unable to digest that for all these times, the Vadodara Municipal Corporation was not aware about the fact that the agency, who was awarded the contract of development of Lake Zone had entered into a sub-contract behind its back with another agency. The investigation reveals that on 02.11.2022, a letter was addressed by Vadodara Municipal Corporation to M/s Kotia Projects asking it to ensure to install CCTV Cameras at the Lake Zone, to take appropriate measures of safety in the activity of boating, to ensure that the experineced and trained life guards may available at the spot, to ensure that the boat did not carry the load more than its capacity and to ensure compliance of all the tender conditions. The said letter had been replied by M/s. Kotia Projects on 03.11.2022 giving assurance of fulfilling all the aforesaid requirements. There is nothing on record to indicate that the Vadodara Municipal Corporation had ever carried out any inspection over the site as regard fulfillment of aforesaid requirements. For the reasons best known to the prosecution and investigating agency, despite this lackadaisical approach on the part of Vadodara Municipal Corporation and its officers, none to them has been arraigned as an accused in the present FIR.

8. The role attributed to the present applicant in the offence is to the effect that he was working as a Boat Navigator with the Dolphin Entertainment and at the time of incident, he was

driving the boat, which had capsized.. The applicant has been arrested in commission of the present offence on 20.01.2024. The aspect as to whether an offence punishable under Section 304 of the IPC is made out or not would require a detailed appreciation of evidence at the end of trial. The prosecution has cited as many as 433 witnesses. The other co-accused have been ordered to be enlarged on bail by this Court as well as by concerned Sessions Court. Considering the same, the trial of the offence is not likely to commence and conclude in near future.

9. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. Central Bureau of Investigation, reported in [2012]1 SCC 40.

10. In the facts and circumstances of the case and considering the nature of the 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.

11. Hence, the present application is allowed. The applicant IS ordered to be released on regular bail in connection with FIR being **C.R.NO. 11196036240021 of 2024 registered with Harni Police Station, Vadodara**, on executing a personal bond of Rs.50,000/- (Rupees Ten Thousand only) with one surety of the like amount to the satisfaction of the 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 injurious to the interest of

the prosecution & shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;

- (c) surrender passport, if any, to the Trial Court within a week;
- (d) not leave the State of Gujarat without prior permission of the Trial Court concerned;
- (e) mark presence before the concerned Police Station once in a month for a period of six months between 11.00 a.m. and 2.00 p.m.;
- (f) furnish the present address of their residences 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 Trial Court;

12. 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.

13. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

14. At the trial, the 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.

15. Rule is made absolute to the aforesaid extent.

**Direct service** is permitted.

**(M. R. MENGDEY,J)**

GIRISH