



**IN THE COURT OF HON'BLE PRINCIPAL DISTRICT &  
SESSIONS JUDGE, AHMEDBAD [RURAL] AT  
NAVRANGPURA, AHMEDABAD.**

**ORDER BELOW EXH. 83**  
**In**  
**SessionsCaseNo.283 of 2022**

1. The applicant-accused No. 20 & 21 has filed this application under the Provisions of Sec. 227 of the Code of Criminal Procedure, 1973 to discharge from the Sessions Case No. 283 of 2022 in connection with the Cri. Reg. No. 11192018220218 of 2022 registered with Dhandhuk Police Station, Ahmedabad [Rural].
2. The applicant-accused No. 20 & 21 stated at length facts of the alleged offence and further stated that in the present case, the Investigation has already been concluded and charge sheet filed before the Court of Ld. Magistrate on 19.10.2022 for the offences punishable U/ss. 304,308, 328, 284, 201, 202, 118 ,120 [b], 114 and 34 of the Indian Penal Code and Sec. 65 [a], 67 [1] [a], 79, 81 and 83 of the

Gujarat Prohibition Act against the present applicant accused.

3. Further stated that the applicants-accused No. 20 & 21 are innocent and they have not committed any acts as alleged in the FIR and Charge Sheet and they are falsely been implicated in the alleged offence.
4. Further stated that on perusal of the entire material of charge sheet including the statement of witnesses cited by the I.O., no prima-facie case is made out against the applicants-accused No. 20 & 21.
5. The applicants-accused Nos. 20 & 21 has stated at length facts of Sec. 304 and 308 of the I.P.C. and also referred the definition of murder as provided U/ss. 299 and 300 of the IPC.
6. Further, stated that there is no overt act attributed to the present applicants-accused Nos. 20 & 21 committed with the intention of causing death, even in so far as an omission of not doing any particularly act is concerned and prima-facie,

there doesn't appear to be any intention, which could be attributed to the present applicants-accused Nos. 20 & 21.

7. The applicants-accused Nos. 20 & 21 further stated at length facts of Sec. 65 and 79 of the Gujarat Prohibition Act. Further, stated that Sec. 65 [A] [3] inter-alia stated with regard to a person supplying material for manufacturing, transporting or having possession of Laththa and Sec. 65 [A] [2] specifying the punishment for manufacture, sale etc. of Laththa, more particularly where there is a death on consumption of laththa.
8. Further states that the allegations leveled by prosecution against the applicants-accused Nos. 20 & 21 would not fall within the scope of Sec. 81 and 83 of the Gujarat Prohibition Act. Further, states that the penal provisions must be strictly construed in the first places. Secondly, there is no vicarious liability in criminal law, unless the statute takes that also within its fold. Further, states that the applicants-accused being 90 & 85 years old, independent non executive directors, who do not take part in the day to day business of the firm and by way of catena of decision of Hon'ble Apex

Court has time and again held that Independent / Non-executive Directors are not involved in day to day affairs of the company and place his reliance on the Judgment reported in AIR [2018] SC 2411 in the case of Chitalapati Srinivas Raju Vs. Securities and Exchange Board of India.

9. Further, states that on perusal of the various panchnama carried out by the Investigating Agency including the scene of offence panchnama, various seizure panchnama etc. there is no material worthwhile to even remotely lends legs to the case of prosecution to stand, qua the applicants-accused Nos. 20 & 21.
10. The applicants-accused has further referred para 16 of the Judgment of the Hon'ble Apex Court reported in 2008 [10] SCC 394 reported in the case of Yogesh Vs. State of Maharashtra and Judgment reported in AIR 1979 SC 366 in the case of Union of India Vs. Prafulla Kumar Samal and anr. and Judgment reported in [2002] 2 SCC 135 of the Hon'ble Apex Court in the Case of Dilawar Balu Kurne Vs. State of Maharashtra.

11. The applicants-accused nos. 20 & 21 further stated that from the perusal of the material on record, there is no evidence worth a name against the applicants-accused and lastly prayed that the applicants-accused Nos. 20 & 21 be discharge in Sessions Case No. 283 of 2022 and further, prayed to allow the present application.
  
12. The Investigating Officer has filed his affidavit vide Exh. 86, wherein, the Investigating Officer has stated at length facts of the alleged offence. It is further stated that the applicants-accused Nos. 20 & 21 are the directors of the Chemical Factory viz. Amos Corporation situated at Piplaj, Devraj Industrial Park. Further, states that as per condition No. 2 of the Methyl Alcohol License MA-2, where the Quantity of Methyl Alcohol, are kept, that place cannot be used as residence, however, the applicants-accused have used that placed as residential premises. It is further stated that Methyl Alcohol is highly inflammable and in case of any unpleasant incident, that would turn into great harm and loss and therefore, the present applicant-accused Nos. 20 & 21 have breached the terms and conditions of the license for Methyl Alcohol.

13. Further, stated that the purpose for which, the present applicant-accused Nos. 20 & 21 has obtained license for Methyl Alcohol, has not been complied with as they have used Methyl Alcohol for other purposes and objects. It is further stated that the Amos Company has not complied with the terms and conditions of the Poison Rules and therefore, the directors of the companies are responsible for the same.
14. It is further stated that during the search of the Amos Company carried out by Drug Prohibition Department on 30.07.2022, it was found 737 Liter Methyl Alcohol more than prescribed quantity. Further, stated that previously, the Company has provided 600 Liters Methyl Alcohol to the other co-accused persons and though, it was within the knowledge of the company that consumption of such Methyl Alcohol, would seriously cause the death of any person, however, the company has provided the quantity of Methyl Alcohol and consumption of such Methyl Alcohol has caused the death of so many people. It is further stated that prima-facie, it appears that the company is having more than

prescribed quantity of Methyl Alcohol i.e. 1337 Liter of Methyl Alcohol.

15. It is further stated that on perusal of the Letter No. Methyl/5-2/2022/6385 dtd. 05.08.2022 of the office of Drugs Prohibition and Excise Directorate, Lal Darwaja, it appears that the Responsible Company Directors has misused the license obtained and thereby, committed breach of terms and conditions and committed an offence punishable U/s. 65-A, 67 [1] A, 79, 81, 82 [1] and 83 of the Gujarat Prohibition Act and the license for M.A-1 and M.A-2 issued to the Amos Corporation has been terminated. Not only that the death has been caused on account of consumption of the Toxic Alcohol by the people of Dhandhuka Police Station Territory and similar incident has taken place in Bezwada and Ranpur Police Station and to that effect offences U/s. 302 I.P.C. have been registered against the applicant-accused Nos. 20 & 21 and lastly prayed to reject the present application.
16. Heard the Ld. Advocate for the applicant-accused no. 20 & 21 and Ld. Spl. Public Prosecutor for the State at length on the facts and provisions of law.

17. The Ld. Advocate for the applicant-accused no. 20 & 21 has submitted written submission vide Exh. 94. The Ld. Advocate for the applicant-accused Nos. 20 & 21 has submitted at length facts of the alleged offence and Charge Sheet Papers and further submitted that the applicants herein are aged about 85 and 90 years are independent / non-executive directors of Amos Corporation situated at Piplaj, Ahmedabad, having its corporate office at Gulbai Tekra, Ahmedabad and the said company is dealing with Methyl Alcohol since the year 2008. The company is having requisite licenses issued by the Prohibition Department, more particularly License MA-1 necessitated for storage, job work, sales, supplies of Methyl Alcohol and license MA-2 required for purchase and sell of Methyl Alcohol meaning thereby that Company is the licensee within the meaning of the Act.
18. Further, stated that the company is involved in trading of various chemicals and primarily has business interests with GNFC. That in the month of June, 2020, the Company took up a job work contract of bottling and packaging with a company by the name of Finar Corporation, wherein, Finar

used to send 200 liters barrel of Methyl Alcohol and the same was bottled in 2.5 liters bottles and repacked and sent back to Finar. That the entire exercise was done under the watchful eyes of the Prohibition Department and both the companies are required to maintain registers and returns pertaining to their business activities.

19. The Ld. Advocate for the applicant-accused nos. 20 & 21 further referred the Rule 12 [2] of the Gujarat Methyl Alcohol Rules, 1981 and submitted that as per the scheme of the Act as well as legislative wisdom behind enacting the same, it is apparent that it is for the special purpose more particularly, in view of the fact that the employee in whose favour the nokarnama / nomination is issued, steps into the shoes of the licensee and is to be treated at par with the holder of the license. The underlying purpose of the issuance of nokarnama / nomination is to fix the responsibility of the individual in charge of the goods, in case of any lapse in the terms of license.
20. Further, stated that the due compliance of the provisions of Gujarat Methyl Alcohol Rules, the company had issued

nokarnama / nomination in favour of the accused no. 15 viz. Jayesh and he was serving as the Godown Keeper / Supervisor of the premises of the company and was in-charge and responsible for the goods and whereas, the company had also appointed a manager viz. Rajendrakumar Pravinchandra to oversee the work of Jayesh and had also issued nokarnama / nomination in his favour.

21. The Ld. Advocate for the applicant-accused nos. 20 & 21 has submitted at length facts of the allegation leveled by the prosecution against them and further submitted that Rule 12 [7] stipulates that the officers of the Prohibition Department are required to regularly visit the premises of the company so as to regularly ascertain the compliances of the terms and obligation under which, the license is issued by the Prohibition Department. The officers of Prohibition Department in due compliance of the aforesaid rules, despite having visited the premises regularly, have never taken note of such residence being there as alleged now nor have noticed any lapses of the breach of the terms of the license by the licensee.

22. Further, as a matter of fact, from the bare perusal of the MA-2 license and the condition narrated therein, the said allegation doesn't find favour as the condition narrated therein, doesn't have clause / Rule pertaining to the same thereby, making the said breach a figment of imagination.
23. It is further submitted that from the perusal of MA-1 or MA-2 license, it nowhere stipulates or necessitate installation of CCTV Cameras within the premises, so therefore, the breach as alleged has no legs to stand.
24. It is further submitted that the company had taken adequate steps whereby they had also appointed Manager i.e. accused no. 23 to oversee the operation being carried out by the accused Jayesh.
25. The Ld. Advocate for the applicant-accused nos. 20 & 21 further submitted that the transaction of selling methyl alcohol by Jayesh was not a continuance transaction more particularly, in view of the fact that prior to 600 liters being stolen and sold by Jayesh, he had in the past for the first time given 1.5 liters as sample to the co-accused for testing.

26. Further, referred at length facts of Rule 6 [7] of the Gujarat Methyl Alcohol Rules and further submitted that in view of the aforesaid rule and in the fact of the present case, as well as considering the volume of transaction between two companies and the allegations of the volume of them, the allegation of breach sought to be invoked against the applicants in their individual capacity pertaining to unaccounted goods is misplaced.
27. It is further submitted that out of the very same transactions, two separate FIR same set of allegations are being registered with the Barwala, Botad and Ranpur Police Station and submitted at length facts of the said two separate FIR registered and further referred the Judgment of the Hon'ble Apex Court in the case of T. T. Antony Vs. State of Kerala &Ors. Reported in [2001] 6 SCC 181 and [2013] 6 SCC 348 reported in the case of Amitbhai Anilchandra Shah Vs. CBI and [2021] 2 SCC 427 reported in the case of Arnab Ranjan Goswami Vs. Union of India.
28. The Ld. Advocate for the applicant-accused Nos. 20 & 21 has submitted at length facts on the principle of vicarious

liability and further submitted that the concept of vicarious is unknown and foreign to Indian Penal Code as like various special statutes like Negotiable Instruments Act etc. save and except Sec. 149 of the Indian Penal Code, wherein, an individual can be held vicarious liable for the act of other forming part of an unlawful assembly.

29. Further, submitted that the license MA-1 and MA-2 issued by the Prohibition Department in favour of Amos Corporation were not individual license in favour of the applicants herein. Even the Accused – Jayesh was not a direct employee of the applicants, but was an employee of the Amos Corporation, meaning thereby, that the employee – employer relationship existed by virtue of the existence of Amos Corporation and Amos Corporation is not cited as an accused in the present case. That without the Company being made an accused, the vicarious liability cannot be fastened against the present applicants, as sought to be attempted in the present case and it is incumbent upon the prosecution to make requisite allegations against the individual accused to make him vicariously liable and further referred the Judgment of the Hon'ble Supreme Court reported in 2015 12

SCC 781 in the case of Sharad Kumar Sanghi Vs. Sangita Rane.

30. The Ld. Advocate for the applicant-accused Nos. 20 & 21 has further submitted at length facts of the alleged offence and further referred Sec. 304 of the IPC and submitted at length facts of the knowledge and intention and further submitted that Sec. 304 covers cases also where the offence is prima-facie an offence of murder punishable U/s. 302. Further submitted that it is a settled preposition of law that “culpable homicide” is genus and “murder” its species. Every murder is culpable homicide, but every culpable homicide is not murder. The Ld. Advocate for the applicant-accused Nos. 20 & 21 further submitted at length facts of Sec 299 and referred the decision of the Hon’ble High Court of Gujarat in the case of Pratik Jadishbhai Thakkar Vs. State of Gujarat reported in [2017] 4 GLR 3018 and the decision of Hon’ble Apex Court reported in 2000 [8] SCC 568 in the case of Shamsheer Khan Vs. State [Government of NCT of Delhi].

31. The Ld. Advocate for the applicant-accused Nos. 20 & 21 further submitted that the invocation of Sec. 304 of IPC further bad in law, more particularly in view of invocation of Sec. 284 of IPC as in the same breath it cannot be sated that the applicants are alleged to have committed offence U/s. 304 & 284 of the IPC, which postulates an act to be a negligent act meaning thereby that without any intention or knowledge.
32. Further, submitted at length fact on the point of criminal negligence and Sec. 304 [A] of the I.P.C. and referred the decision of the Hon'ble Supreme Court in the case of Suleman Rahiman Mulani Vs. State of Maharashtra reported in 1968 AIR [SC] 829.
33. The Ld. Advocate for the applicant-accused Nos. 20 & 21 further submitted at length facts of Sec. 65 [A], 65 [A] [1], 65 [A] [2], 65 [A] [3], 67 [1] [A], 79, 81 and 83 of the Gujarat Prohibition Act. Further submitted that it is settled preposition of law that if two views are equally possible and the Ld. Judge is satisfied that the evidence is produced before him give rise to mere suspicion as distinguished from

suspicion, he is fully within his right to discharge the accused and referred the decision of the Hon'ble Supreme Court in the case of Jagdish Joshi Vs. State of Maharashtra reported in 2008 [10] SCC 394 and in the case of Union of India Vs. Prafulla Kumar Samal reported in 1979 [3] SCC 4 as also in the case of Dilawar Babu Kurane Vs. State of Maharashtra reported in 2002 [2] SCC 135 and lastly prayed to allow the present application.

34. In support of the above submissions, the Ld. Advocate for the applicant-accused nos. 20 & 21 has produced the following Judgments of the Hon'ble Apex Court and Hon'ble High Courts.

1. Common Oral Oder dtd. 15.09.2022 of the Hon'ble High Court of Gujarat passed in R/Cri. Misc. Application No. 15105 of 2022.
2. 2008 [10] SCC 394 in the case of Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra.
3. 1979 [3] SCC 4 in the case of Union of India Vs. Prafulla Kumar Samal.
4. 2002 [2] SCC 135 in the case of Dilawar Babu Kurane Vs. State of Maharashtra.
5. 2017 [4] GLR 3018 in the case of Pratik Jadishbhai Thakkar Vs. State of Gujarat.

6. 2000 [8] SCC 568 in the case of Shamsheer Khan Vs. State [Govt. of NCT of Delhi]
  7. 1968 AIR SC 829 in the case of Suleman Rahiman Mulani Vs. State of Maharashtra.
  8. 2015 [12] SCC 781 in the case of Sharad Kumar Sanghi Vs. Sangita Rane.
  9. 2001 [0] AIJEL-SC 31542 Hon'ble Supreme Court in the case of T. T. Antony Vs. State of Kerala.
  10. 2013 [0] AIJEL-SC 53931 Hon'ble Supreme Court in the case of Amitbhai Anilchandra Shah Vs. C.B.I.
  11. 2020 [0] AIJEL-SC 66282 Hon'ble Supreme Court in the case of Arnab Ranjan Goswami Vs. Union of India.
  12. License of the Sale of Methyl Alcohol.
35. *Per-contra*, The Ld. Public Prosecutor submitted at length the facts of the application and referred the charge sheet papers and Record & Proceedings of the Sessions Case No. 283 of 2023.
36. The Ld. Public Prosecutor further submitted at length the facts of the alleged offences and role of the State in Criminal Trial. Further, submitted that the prosecution side has produced the numbers of documentary evidences on record and thereafter, opened the prosecution case under the Provisions of Sec. 226 of the Cr. P.C.

37. The Ld. Public Prosecutor further submitted at length facts of the Charge Sheet Papers and argued on the point of how the alleged offences have been committed. Further, submitted that after the investigation, Charge Sheet has been filed for the alleged offence. The Ld. P.P. further submitted that as per Condition No. 2, where the Quantity of Methyl Alcohol are kept, that place cannot be used as residence, however, the applicants-accused has used that placed as residential premises. It is further submitted that Methyl Alcohol is highly inflammable and in case of any unpleasant incident that would turn into great loss and therefore, the present applicant-accused Nos. 20 & 21 has breached the terms and conditions of the license for Methyl Alcohol.
38. Further, the purpose for which, the present applicant-accused Nos. 20 & 21 has obtained license for Methyl Alcohol, has not been complied with and they have used Methyl Alcohol for other purposes and objects. That the Amos Company has not complied with the terms and conditions of the Poison Rules and therefore, the directors of the companies are responsible for the same.

39. Further submitted that during the search of Amos Company carried out by Drug Prohibition Department on 30.07.2022, it was found 737 Liter Methyl Alcohol more than prescribed quantity. Further, previously, the Company has provided 600 Liters Methyl Alcohol to other co-accused persons and though, it was within the knowledge of the company that consumption of such Methyl Alcohol, would seriously cause the death of any person, however, the company has provided the quantity of Methyl Alcohol and consumption of such Methyl Alcohol has caused the death of so many people. Further, it prima-facie, appears that the company is having more than prescribed quantity of Methyl Alcohol i.e. 1337 Liter of Methyl Alcohol.
40. The Ld. Public Prosecutor further referred the Letter No. Methyl/5-2/2022/6385 dtd. 05.08.2022 issued by the office of Drugs Prohibition and Excise Directorate, Lal Darwaja and submitted that the Responsible Company Directors has misused the license obtained and thereby, committed breach of terms and conditions and committed an offence punishable U/s. 65-A, 67 [1] A, 79, 81, 82 [1] and 83 of the Drugs Prohibition Act and the license for M.A-1 and M.A-2

issued to the Amos Corporation has been terminated. Not only that the death has been caused on account of consumption of the Toxic Alcohol by the people of Dhandhuka Police Station Territory and similar incident has taken place in Barwala and Ranpur Police Station and to that effect offences U/s. 302 I.P.C. have been registered against the applicant-accused Nos. 20 & 21 and lastly prayed to reject the present application.

41. I have gone through the application, perused the Charge Sheet Papers, Affidavit filed by the Investigating Agency. Considered the advanced arguments of the Ld. Advocate for the applicants-accused Nos. 20 & 21 and Ld. Public Prosecutor for the State on the facts and provisions of law and also considered the Judgments of the Hon'ble Apex Court and Hon'ble High Court submitted by the Ld. Advocate for the applicants-accused Nos. 20 & 21.
42. The Present applicant accused has filed this application under the Provisions of Sec. 227 of the Code of Criminal Procedure, 1973 and hence, it is required to be reproduced as under;

*"Sec. 227 - Discharge -If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."*

43. Considering the facts and circumstances of the subject matter and on perusal of the Charge Sheet papers, it appears that the present applicant-accused Nos. 20 & 21 are the directors of Amos Company and Methyl Alcohol is highly inflammable and in case of any unpleasant incident, it would cause great harm and loss. Further, it appears that in unfortunate incident 14 persons lost their lives and 60 persons caused physical difficulties and this, fact is required to be considered.

44. It also appears that 600 liters Methyl Alcohol illegally supplied to the co-accused persons, who were doing the business of selling of desi liquor and thereby, involved in the prohibition activities, which affected the area of territory of the District of this Court and also in other territory i.e. Barwala and Ranpur of Botad District and loss the life of

innocent persons and also caused serious injuries to the numbers of persons.

45. Considering the facts and circumstances of the subject matter, after thorough investigation, prosecution has produced total 216 documents vide documentary list of evidence at Exh. 43 to prove the charges of the alleged offence and this fact, is also required to be considered.
46. The Ld. Advocate for the applicant-accused Nos. 20 & 21 vehemently argued and contended that the present company is having requisite license issued by the Prohibition Department more particularly license MA-1 and MA-2 and also referred the Gujarat Methyl Alcohol Rules. Considering the advance arguments of Ld. Advocate of the applicant-accused Nos. 20 & 21 and considering the facts and circumstances of the subject matter, all the contentions raised on behalf of the applicants-accused side are required to be taken into consideration at the time of trial, in other words, it requires to record the evidence of prosecution and at this stage, detail appreciation of prosecution evidence is not required and only to ascertain the facts as to whether the

prima-facie case is made out to frame the charge or not for the alleged offences against the applicants-accused.

47. Considering the facts and circumstances of the subject matter, the Ld. Advocate for the applicants-accused has vehemently argued on the principle of vicarious liabilities. It appears that both the applicants-accused Nos. 20 & 21 are the directors of the said company and at this stage, contention raised by the applicants-accused cannot be sustained in the eye of law without giving an opportunity to the prosecution and without recording the evidence.

48. Considering the facts and circumstances of the subject matter, the applicants-accused side has vehemently argued on the facts of Nokarnama and further submitted that directors of the company has appointed supervisors as per the rules and executed Nokarnama and complete liabilities are of the appointed supervisors as per Nokarnama and considering this fact, the directors of the company cannot run away from their liabilities especially to observe and supervise day today activities doing by the appointed persons as per the Nokarnama. In other words, the directors

cannot escape from their legal liabilities and this fact is required to be considered.

49. Considering the seriousness of the alleged offence, prima-facie materials are available on record to frame the charge against the accused persons and at this stage, not required detailed inquiry, in other words, at this stage, not required detail appreciation of prosecution evidence produced on record and the contentions raised by the applicants side is a mix question of facts and law.
50. Further, considering the facts and circumstances of the subject matter, it is required to be referred the recent judgment of Hon'ble Apex Court in the case of State of Rajasthan Vs Ashok Kumar Kashyap reported in 2021 SCC Online SC 314 wherein it is held that :

*As rightly observed and held by the learned Special Judge at the stage of framing of the charge, it has to be seen whether or not a prima facie case is made out and the defence of the accused is not to be considered. As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the*

*charge and/or considering the discharge application, the mini trial is not permissible.*

51. Considering the facts and circumstances of the subject matter and considering seriousness of the offences, role attributed to the present applicant-accused nos. 20 & 21 in the alleged offences and considering the incriminating material available on record, prima-facie case is made out against the present applicant-accused nos. 20 & 21 and therefore, in the interest of justice, following final order is passed.

**ORDER**

- \*. The present **Discharge Application Exh. 83 preferred by the applicant-accused Nos. 20 & 21** in connection with the alleged offence in Sessions Case No. 283 of 2022 is **hereby rejected**.

*Pronounced in the open Court today on this 30th day of October, 2023, Ahmedabad [Rural] at Navrangpura.*

(D.M. Vyas)  
Principal District & Sessions Judge  
Ahmedabad (Rural) at Navrangpura.  
(Code : GJ00326 )