

: Order below Exh. 12 in Sessions Case No.14 of 2024 :

01. The accused nos. 1, 2, 6 & 7 have filed present application u/s. 173(8) of Criminal Procedure Code seeking further investigation.
02. Pursuant to the application filed by the said accused, the same was fixed for hearing and prosecution was ordered to file reply. The prosecution has filed reply vide Exh.17 opposing the present application.
03. Heard the learned advocate Mr.C.M.Rathod for the accused and learned P.P. Mr. K.M.Makwana for the State.
04. Learned advocate for the accused has submitted that the chargesheet no.16/2024 dated 13.02.2024 is filed by the Investigating Officer in furtherance of offence registered with Botad Town Police Station being CR No. 111 9000 233 1630/2023 U/s. 302, 323, 337, 143, 147, 148, 149 120(B) of IPC and Section 135 of G.P.Act and the Sessions Case culminated out of the said offence is pending. He has further submitted that none of the accused have committed any offence as alleged and on the date, time and place of offence, none of the accused were present and they have been falsely implicated with the alleged offence by concocting evidence. He has further submitted

that the brother of accused no.4 namely Bijalbai Vibhabhai Satiya and the father of accused no.7 namely Dehurbhai Jodhabhai Satiya addressed a complaint dated 02.12.2023 to Superintendent of Police, Botad inter-alia contending that the said accused were not present at the scene of offence and were present at the distance place, the same can be ascertained by CCTV Footage's, mobile location, by recording the statement of concerned witnesses, yet Superintendent of Police, Botad has not given any direction to the concerned Investigating Officer and no investigation qua the application dated 02.12.2023 is carried out and one sided investigation is carried out and chargesheet in question filed. He has further submitted that the brother of accused no.4 and the father of accused no.7 filed an application under RTI on 12.06.2024 to which the reply was tendered by the Public Information Officer, Botad Town Police Station dated 08.04.2024 inter-alia stating that no CCTV Footage's are collected and no evidence is collected pursuant to application dated 02.12.2023. He has further submitted that infact and in reality the Investigating Officer deliberately has not kept the application dated 02.12.2023 alongwith the papers of investigation and so as to

implicate the accused falsely with the offence has carried out one sided investigation. He has further submitted that on the date of offence i.e. on 22.11.2023 the accused no.1 Jagabhai Vibhabhai Satiya who was driving the rixa bearing registration no.GJ-13-Y-1000 on rental basis, was carrying the passengers at 8:30 morning hours in the area of Gadhada Police Station which is situated at the distance of 25 K.M. from the place of offence and the CCTV Footage of Gadhada Police Station speaks about the same, yet the Investigating Officer has not collected the said CCTV Footage's or has recorded the statement of the owner of said Rixa. He has further submitted that the Investigating Officer so as to unearth the truth could have collected call details or could have ascertained the location of mobile no.9427141099, yet the Investigating Officer failed to do so. He has further submitted that the accused no.2 namely Jinabhai Vibhabhai Satiya on the day, time and date of offence had been at Damnagar for the eye treatment in the eye camp of Bhurakhiya Hanuman Temple and the said place is situated at the distance of 70 K.M. from the place of offence. He has further submitted that on the said day, the accused left the house at 8:00 morning hours and reached to the eye camp at 10:00

morning hours and the said aspect can be ascertained from the CCTV Footage and the CCTV camera installed at the Bhurakhiya Hanuman Temple, yet the Investigating Officer failed to collect the said footage's for the reason best to known to him. He has further submitted that the said accused has left the eye camp at 12:30 noon hours and went to place of Hakabhai Bijalbhai Satiya at village Bhurakhiya in his car. He has further submitted that the said accused was using mobile no.9428638797 and yet the Investigating Officer failed to collect the call details of said mobile, CCTV footage's of said place, certificate qua the footage's as contemplated U/s. 65(B) of the Indian Evidence Act and failed to record the statement of treating doctors in the camp. He has further submitted that the accused no.6 namely Sureshbhai Nanjibhai Satiya by keeping the cattle, is doing the business of milk and on the day of incident at about 10:30 morning hours went to Ugamedi road, Gadhada which aspect can be ascertained from the footage of Rajwadi Hotel, yet the Investigating Officer failed to do so. He has further submitted that from the said place the said accused went with cattle in the sim of Shivrajbhai @ Bhagubhai Valkubhai Dhadhal who is the owner of land bearing survey no.73 paiki 3 for grazing

cattle and stayed there upto 01:00 noon hours. He has further submitted that at that time Shivarajbhai @ Bhagubhai as well as inhabitants of Gadhada namely Rahabhai Chothabhai Parmar and Munnabhai Sajjanbhai Mer were also grazing their cattle in the same field which is situated at the distance about 30 K.M. from the place of offence. He has further submitted that the said accused on the said day had talked with the owner of the field namely Shivarajbhai @ Bhagubhai from the mobile of farmer of the field namely Maheshbhai Bhupendrabhai Rathod bearing no.6356018709 and though the said aspect was brought to the notice of Investigating Officer, the Investigating Officer failed to record the statement of such witnesses, collect the call details of mobile and ascertain the location of the said accused. He has further submitted that the accused no.7 namely Bharatbhai Dehurbhai Satiya on the day of incident by driving the rixa D-1 (Chhakado) was going towards the Ugamedi-Ningala by carrying goods and passengers from Gadhada New Bus-Station at 10:30 morning hours and returned at 12:30 noon hours and the said aspect could be ascertained from the CCTV camera installed at Krishna Pan & Dairy, near Gadhada Bus-Station. He has further submitted that at

about 12:30 noon hours whilst the accused was present at said Krishna Pan & Dairy with labour of Mohanbhai namely Imranbhai Ikbalbhai at 1:00 noon hours, the Corporator of Gadhada namely Kanubhai Jebaliya came to the said place and the accused had a talk with him for about one minute and thereafter, the accused went for fair. He has further submitted that the aspect of the presence of said accused can be ascertained from the CCTV footage, by recording statement of said personnel, yet the Investigating Officer failed to do so. He has further submitted that on 26.11.2023 the discovery panchnama has been drawn by the Investigating Officer at the instance of accused nos. 5, 6 & 7 and accused namely Ranchhodbhai Satiya and Jagabhai Nanjibhai but the accused nos. 5, 6 & 7 have not committed such offence and wrongly stated to have discovered the weapons and the said aspect could be gathered from the CCTV footage of Botad Town Police Station dated 26.11.2023 from 14:00 hours to 18:00 hours and yet the Investigating Officer failed to collect the said CCTV footage's. He has further submitted that the Investigating Officer deliberately and willfully has not inquired about the finger print of the said accused by sending the said weapons to FSL and in that

regard also necessary investigation is not done. He has further submitted that so as to unearth truth and to bring out the true and correct material on record further investigation is necessitated. He has further submitted that if this Court comes to a conclusion that further investigation is necessitated, the further investigation may not be handed over to the Investigating Officer and be handed over to the Range I.G. or independent agency and accordingly application may kindly be allowed.

In support of the aforesaid submissions, the learned advocate for the accused has referred to and relied upon the following judgments:

- (1) Hon'ble Supreme Court of India, in the case of Vinubhai Haribhai Malaviya and Ors. Vs. State of Gujarat and Ors. (Cri. Appeals Nos. 478–479 of 2017).
- (2) Hon'ble High Court of Gujarat, in the case of Gabhruji Babuji Solanki Vs. State of Gujarat (R/Special Criminal Application No.4583 of 2021).
- (3) Hon'ble High Court of Gujarat, in the case of Mahipatbhai Bahadurbhai Kotila Through Krishnaben Mahipatbhai Kotila Vs. State of Gujarat & Anr. (R/Special Criminal Application No.5345 of 2021).

Per–contra, learned P.P. for the State has submitted that the contents of application are false and frivolous and

the reasons assigned in the application are not germane. He has further submitted that the defence of alibi raised by the accused is absolutely false as they have been witnessed by the eye witnesses at the place of offence and therefore, the present application in nature of defence may kindly be dismissed.

05. Having heard the learned advocates for the respective parties and perusing the application and reply vide Exh.17, it transpires that the application in question seeking further investigation at the instance of accuse nos. 1, 2, 6 & 7 is rather in nature of setting out the defence of alibi and further seeking direction to collect the evidence in the manner as is stated by the accused. The investigation is the domain of Investigating Officer and it is not open for the accused to monitor and direct the Investigating Officer to carry out the investigation in the manner and way prescribed by the accused. The Investigating Officer on conclusion of investigation filed the chargesheet against the accused as sufficient material were found against them and the case on committal to this Court is registered as Sessions Case No.14 of 2024. The application in question invoking Section 173(8) of Cr.P.C. for further investigation is rather in nature of defence claiming alibi

and the said aspect cannot be considered at the stage when the evidence is yet to be led.

06. From the perusal of application, it transpires that the accused have mainly filed this application for bringing their defence on record. The accused are entitled to raise appropriate defence and produce appropriate defence evidence at appropriate stage and the burden to discharge the said aspect, is on the shoulder of accused. The accused rather shouldering the responsibility of discharging the said burden is trying to shift the said burden on the Investigating Officer and is expecting the Court to help the accused in said process, which is not permissible under the law. The accused, if intend to examine the witnesses so as to prove their defence, the accused can very well do so and this Court can very well summon the said witnesses in that regard at appropriate stage. The accused, if intend to produce any document or bring any material on the record, during the course of trial, the accused can do so and appropriate provisions in that regard are already made under Cr.P.C. and accused can very well take the recourse to the said provisions. The accused by filing the application in question assigning the reasons stated therein, are rather trying to shift their

responsibility, which they owe, on the shoulder of Investigating Officer and are trying to get the said work done through Investigating Officer which infact, is not permissible under the law.

The facts of the judgments referred to and relied upon by the learned advocate for the accused stands on different footing as to the facts of the case on hand and therefore, the said judgments are not helpful to the accused.

The Investigating Officer is not supposed to collect the evidence or material as is directed by the accused and hence, following order:

:: ORDER ::

- [1] The present application filed by the accused nos. 1, 2, 6 & 7 seeking further investigation stands rejected.

Pronounced in the open Court today on this 25th Day of October, 2024, at Botad.

Dt: 25-10-2024
Botad

Sd./-
(Hemang R. Rawal)
Sessions Judge
Botad
Code No :GJ 01497

Imran...