

(2010) 12 GUJ CK 0214
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 15046 of 2010

A Satar A Musabhai and Another

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 24-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 304B, 306, 34, 498A

Citation : (2010) 12 GUJ CK 0214

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Yash N. Nanavaty, for the Appellant; D.C. Sejpal, APP, for the Respondent

Judgement

Abhilasha Kumari, J.—Rule. Mr. D.C. Sejpal, learned Additional Public Prosecutor waives service of notice of Rule on behalf of Respondent State of Gujarat. On the facts and in the circumstances of the case, and with the consent of the learned Counsel for the respective parties, the application is being heard and finally decided, today.

2. This application has been filed with a prayer to delete/modify conditions Nos. 8 (d) and 8(e) in order dated 15.4.2009 rendered in Criminal Misc. Application No. 4238/2009. The applicants had filed the above-mentioned application for grant of bail u/s 439 of the Code of Criminal Procedure, in connection with offences registered vide F.I.R. being C.R. No. I-180 of 2008, registered with Kodinar Police Station, under Sections 498A, 306, 304B and 34 of the Indian Penal Code. The Court had granted bail to the applicants by imposing certain conditions, and the relevant two conditions are reproduced as under:

8. (a) shall mark their presence before the Investigating Officer of the concerned Police Station on 6th March, 2009 and thereafter on 15th and 30th of every English calendar month, between 10:00 am and 5:00 pm, till the commencement of the trial. The Investigating Officer will ensure the presence of a Senior lady

Police Officer, at all times, when the applicant No. 2 namely Jubedaaben wife of A. Satar Musabhai marks her presence.

(b) shall not leave the local limits of the State of Gujarat without the prior permission of the concerned Sessions Judge;

3. I have heard Mr. Yash N. Nanavaty, learned Counsel for the applicants and Mr. D.C. Sejpal, learned Additional Public Prosecutor for the State of Gujarat.

4. It is submitted by the learned advocate for the applicants that both the applicants are aged about 59 and 46 years, respectively, and as the trial has not yet commenced, they are facing hardships by remaining present before the investigating officer, twice a month as directed. It is further submitted that considering the age of the applicants as well as health problems suffered by them, condition No. 8(d) may kindly be deleted/ modified. Insofar as condition No. 8(e) is concerned, it is submitted that applicant No. 1 is suffering from heart disease and he has to travel outside Gujarat, on medical grounds, therefore, the said condition may also be deleted/modified.

5. Mr. D.C. Sejpal, learned Additional Public Prosecutor has opposed the deletion of the above two conditions on the ground that the same were accepted by the applicants at the time of grant of bail. He has further submitted that if the applicants want to travel outside the State of Gujarat, they can always take the permission of the concerned Sessions Judge.

6. I have heard the learned Counsel for the respective parties and considered the submissions made at the Bar as well as averments made in the application.

7. By condition No. 8(d), the applicants are required to mark their presence twice a month, as stipulated, at the concerned police station. In case the applicants are facing some difficulty due to age or health reasons, this condition can be modified to the extent that they shall mark their presence once a month before the concerned Police Station; but in the considered view of this Court, deletion of the condition would not be appropriate, as bail has been granted to the applicants only subject to certain conditions. Insofar as condition No. 8(e) is concerned, this Court does not find that there is any justification for deletion of the same, as the applicants are free to approach the concerned Sessions Judge for prior permission before traveling outside the limits of the State of Gujarat, therefore, the prayer made by the applicants regarding condition No. 8(e) cannot be accepted. Accordingly, the following order is passed:

Condition No. 8(d) is modified as under:

8. (d) shall mark their presence before the Investigating Officer of the concerned Police Station between 1st and 7th of every English calendar month, between 10:00 am and 5:00 pm, till the commencement of the trial. The Investigating Officer will ensure the presence of a Senior lady Police Officer, at all times, when the applicant No. 2 namely Jubedaaben wife of A. Satar Musabhai marks her presence.

8. The prayer made for deletion/modification of condition No. 8(e) is rejected.

9. The application is partly-allowed, as above. Rule is made absolute, to the above extent.