

(2011) 02 GUJ CK 0057

In the Gujarat High Court

Case No : Special Criminal Application No. 131 of 2010

Ayubkhan Hasamkhan Pathan

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Citation : (2011) 02 GUJ CK 0057

Hon'ble Judges : Akil Abdul Hamid Kureshi, J

Bench : Single Bench

Advocate : M.M. Tirmizi, for the Appellant; J.K. Shah, APP, for the Respondent

Final Decision : Allowed

Judgement

Akil Kureshi, J.—Petitioner has challenged an order dated 2.1.09 passed by the learned Judicial Magistrate, First Class, Vadodara below application of the Petitioner dated 24.11.08 seeking release of muddamal articles namely, Rs. 3,65,250/- by way of interim custody out of Rs. 5,30,250/- seized by the Investigating Agency.

2. Since the learned Magistrate rejected the said application, the Petitioner also preferred Revision Application, which also came to be dismissed by the order dated 9th October 2009 by the learned Additional Sessions Judge, Vadodara.

3. Counsel for the Petitioner submitted that the Petitioner is engaged in the work of labor contract. He had withdrawn the said amount of Rs. 3,65,250/- from the Bank before the raid under the Bombay Gambling Act. No useful purpose will be served in keeping such muddamal articles in custody. The trial may take long time to conclude. He further submitted that the Petitioner would abide by any just conditions that may be imposed. Reliance was placed on a decision of this Court in the case of Narmadaben v. State of Gujarat, 1999 GLHEL (HC) 203376.

4. Learned APP opposed petition contending that trial is yet to be completed.

5. Upon perusal of the documents on record, it appears that the case of gambling

was registered against the Petitioner and other co-accused. During investigation, cash amount of Rs. 3,65,250/- was seized from the Petitioner. Learned Magistrate refused to release the amount on the ground that activities of gambling and speculation are widespread in the society and the same should not be encouraged. The learned Additional Sessions Judge found no reason to interfere since the trial was still not completed.

6. In the facts of the case, I am of the opinion that no useful purpose will be served in retaining the cash seized from the Petitioner. It is his case that the amount was withdrawn from the bank before the raid to use in his business of labor contract. Without expressing any opinion on such contentions, I am of the opinion that subject to certain safeguards, the amount should be released by way of interim custody in favor of the Petitioner.

7. In the result, the petition is allowed. Impugned order dated 2.1.2009 passed by the learned Judicial Magistrate First Class, Vadodara and the order dated 9th October 2009 passed by the learned Additional Sessions Judge are quashed. Amount of Rs. 3,65,250/- shall be released in favor of the Petitioner subject to following conditions:

The Petitioner shall file an undertaking before this Court that such amount shall be deposited before the trial court if and when directed;

The Petitioner shall furnish a bank guarantee of matching amount i.e. Rs. 3,65,250/ before the same is released;

It would be open for the courts below to direct the Petitioner to produce muddamal as and when necessary;

The amount shall be released after drawing panchnanma.

With the above directions, the petition is disposed of.