

(2011) 06 GUJ CK 0014
In the Gujarat High Court

Case No : Special Criminal Application No. 1577 of 2011

Kantibhai Dhayabhai Patel

APPELLANT

Vs

State of Gujarat and 1

RESPONDENT

Date of Decision : 30-06-2011

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2011) 06 GUJ CK 0014

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Hardik A. Dave, for the Appellant; K.P. Raval, Assistant Public Prosecutor for Respondent(s) 1 and Mr. Prabhav A. Mehta for Respondent(s) 2, for the Respondent

Judgement

Honourable Mr. Justice M.R. Shah

1. RULE. Shri K.P. Raval, learned Additional Public Prosecutor waive service of notice of Rule on behalf of respondent No. 1. Shri Prabhav Mehta, learned advocate has stated at the Bar that he has instructions to appear on behalf of respondent No. 2 and he shall file the vakalatnama during the course of the day. He waives service of notice of Rule on behalf of respondent No. 2. In the facts and circumstances of the case and with the consent of learned advocates appearing for respective parties, petition is taken up for final hearing today.

2. Present Special Criminal Application under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 has been preferred by the petitioner - original accused challenging the impugned order dated 06.06.2011 passed by the learned Chief Judicial Magistrate, Vadodara below Exh.105 in Criminal Case No. 4518/1995 insofar as imposing condition No. 6 in the aforesaid order directing the petitioner to deposit a sum of Rs. 40 lacs with the trial Court while releasing him on bail, which came to be confirmed by the learned Revisional Court by impugned judgment and order dated 24.06.2011

passed in Criminal Miscellaneous Application No. 84/2011.

3. Shri Hardik Dave, learned advocate appearing on behalf of the petitioner has vehemently submitted that imposing condition of depositing Rs. 40 lacs by the petitioner, while releasing the petitioner on bail is too excessive and harsh and therefore, it is requested to consider the same. It is submitted that as such petitioner has already learnt a lesson by remaining in jail for one month and on each date of hearing/adjournment he shall remain present before the learned trial Court and shall cooperate the trial Court in early disposal of the criminal case. It is submitted that the petitioner may be directed to deposit some amount and with respect to the balance amount, the petitioner may be directed to furnish the solvent surety to the satisfaction of the trial Court.

4. Shri Prabhav Mehta, learned advocate appearing on behalf of respondent No. 2 has submitted that as such the petitioner has agreed before the learned trial Court that he will deposit Rs. 40 lacs and only thereafter the impugned condition has been imposed. It is submitted that as such there is total non-cooperation on the part of the petitioner. It is submitted that he is not even ready to enter into the witness box and give further statement. Therefore, it is requested to consider the aforesaid conduct on the part of the petitioner.

5. Shri Raval, learned Additional Public Prosecutor has requested to pass appropriate order.

6. Heard the learned advocates appearing on behalf of the respective parties and considered the impugned orders passed by both the Courts below. Having heard the learned advocates appearing for respective parties and considering the impugned orders, it appears to the Court that while releasing the petitioner on bail imposing the condition of depositing Rs. 40 lacs is too excessive and harsh. In the facts and circumstances of the case, the learned Chief Judicial Magistrate, Vadodara might be justified in directing the petitioner to deposit the amount more particularly considering the fact that the criminal case is of the year 1995 and it was found by the learned trial Court that there is a non-cooperation on the part of the petitioner. However, directing the petitioner to deposit a sum of Rs. 40 lacs which is a cheque amount would be denying bail to the petitioner. In the facts and circumstances of the case and looking to the conduct on the part of the petitioner, it appears to the Court that if the amount which is directed to be deposited by the learned trial Court is reduced so that in future the petitioner cooperates the learned trial Court and remain present on each date of adjournment and for the balance amount he is directed to furnish solvency surety to the satisfaction of the trial Court, it appears to the Court that it will meet the ends of justice. Shri Hardik Dave, learned advocate appearing on behalf of the petitioner, under the instructions, has stated at the Bar and has assured the Court on behalf of the petitioner that petitioner shall fully cooperate the learned Magistrate in early disposal of the criminal case and shall remain present before the learned trial Court on each date of adjournment and even give his further statement on the next date of hearing.

7. In view of the above and for the reasons stated above and the submissions made by the learned advocate appearing on behalf of the petitioner recorded herein above, present Special Criminal Application is allowed in part. The impugned order dated 06.06.2011 passed by the learned Chief Judicial Magistrate, Vadodara below Exh.105 in Criminal Case No. 4518/1995, imposing condition No. 6 and directing the petitioner to deposit a sum of Rs. 40 lacs with the trial Court is hereby modified to the extent that instead of Rs. 40 lacs, the petitioner shall deposit a sum of Rs. 2,50,000 with the trial Court within three days from the date of his release (Shri Hardik Dave, learned advocate appearing on behalf of the petitioner under the instructions from the petitioner has agreed to deposit the aforesaid amount with the trial Court) and furnish solvent surety for an amount of Rs. 37,50,000/- to the satisfaction of the trial Court within a period of two weeks from the date of his release. It is made clear that this order is passed on an assurance given by Shri Hardik Dave, learned advocate appearing on behalf of the petitioner, under the instructions from his client, that the petitioner shall fully cooperate with the learned trial Court in early disposal of the aforesaid criminal case and that he will remain present before the learned trial Court on each date of adjournment and therefore, in case it is found that the petitioner is not cooperating, the aforesaid amount of Rs. 2,50,000/- deposited should be forfeited and it will be free for the learned Chief Judicial Magistrate to issue warrant against the petitioner in accordance with law. Shri Hardik Dave, learned advocate appearing on behalf of the petitioner has submitted that petitioner shall file an undertaking to the aforesaid extent within seven days from the date of release before this Court as well as with the learned trial Court. Rule is made absolute accordingly. Direct service is permitted.