

(2006) 06 GUJ CK 0068

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 5097 of 2006

Limbabhai Vajabhai Kharadi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 16-06-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 465, 467, 468, 469

Citation : (2006) 06 GUJ CK 0068

Hon'ble Judges : A.L. Dave, J

Bench : Single Bench

Advocate : K.J. Shethna, for the Appellant; P.D. Bhate, Assistant Public Prosecutor, for the Respondent

Judgement

A.L. Dave, J.—Rule. Mr. Bhate, learned Addl. Public Prosecutor for the State waives the service of notice of Rule.

2. Heard, learned Advocate for the applicant and learned A.P.P. for the opponent - State.

3. Following aspects are considered.

Applicant is facing charges for the offences punishable under Sections 465, 467, 468, 469, 471, 474, 484 read with Section 120(B) of the Indian Penal Code.

Investigation is over and charge-sheet is filed.

The case against the applicant is dependent mainly on documentary evidence collected.

Rest of all the accused persons are released on bail.

It is true that applicant is the one and only signatory to the communication to the City Sessions Courts No. 6 and 7 (Annexure-C) because, he was the only person who could have addressed this communication and therefore, his case cannot be considered at par with all co-accused in toto. But, the allegations

against him is that he is a party to the conspiracy, has to be viewed from an angle that, he does not implement the order, which he could have done as Superintendent of Prison but, addresses the communication to the Court in view of the fact that the prisoner in respect of whom the purported parole order was passed, was in judicial custody as an under trial prisoner and, no such order could have been passed by the Government. It is true that he could have referred the order back to the Government, instead; he has forwarded the same to the Court seeking appropriate orders. Different persons act differently in different situation more so when one has to act as subordinate against a superior authority.

Applicant is a government servant having put in about 25 years service in the prison department and there are no criminal antecedents.

In the opinion of this Court, case therefore, deserves consideration, but on stringent conditions.

4. The applicant is ordered to be released on bail in connection with Crime Register No. I-554 of 2004 of Sabarmati Police Station, Ahmedabad on his executing a bond of Rs. 10,000/- (Rupees Ten Thousand only) with one surety of the like amount to the satisfaction of the lower Court and subject to the conditions that he shall;

- a) not take undue advantage of his liberty or abuse his liberty;
- b) not act in a manner injurious to the interest of the prosecution;
- c) maintain law and order;
- d) not leave the State of Gujarat without the prior permission of the Sessions Court concerned;
- e) furnish the address of his residence at the time of execution of the bond and will not change the residence without prior permission of this Court;
- g) surrender his passport, if any, to the lower Court within a week;

5. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or to take appropriate action in the matter.

6. Bail before the lower Court having jurisdiction to try the case.

7. Rule is made absolute. Direct Service is permitted.