

(2023) 07 GUJ CK 0016
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 14546 Of 2019

Mayurbhai Jayantibhai Sapariya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 04-07-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439(2)

Indian Penal Code, 1860 — Section 34, 120(B), 406, 420, 465, 468, 471

Citation : (2023) 07 GUJ CK 0016

Hon'ble Judges : Hemant M. Prachchhak, J

Bench : Single Bench

Advocate : Hardik A Dave, Tirthraj Pandya

Final Decision : Allowed

Judgement

Hemant M. Prachchhak, J

1. This application is preferred under Section 439(2) of the Code of Criminal Procedure, 1973 by the applicant – original complainant for cancellation of bail granted to the respondent No.2 herein - original accused by the learned Principal District Judge, Navsari vide order dated 8. 7.2019 passed in Criminal Misc. Application (Reg) Bail No.529 of 2019 for the offence punishable under Sections 406, 420, 465, 468, 471, 34, 120(B) of the Indian Penal Code in connection with the offence registered being I-C.R. No.40 of 2019 before Chikhli Police Station, Navsari.

2. Heard Mr.Hardik A. Dave, the learned counsel appearing for the applicant – original complainant and Mr. Tirthraj Pandya, the learned APP appearing for the respondent No.1 - State of Gujarat.

3. Mr.Dave, the learned advocate for the applicant, submitted that the impugned order is ex facie illegal and arbitrary and that the same is passed without appreciating the facts and circumstances of the case. Learned advocate for the applicant submitted that during the hearing of the regular bail application,

second complaint came to be registered against the respondent accused being C.R. No.I-09 of 2019 before D.C.B. Police Station, Rajkot City. He also submitted that even after granting bail, the respondent accused has committed breach of conditions imposed by the trial court and also not co-operated with the investigation and even did not remain present before the trial court during the trial. He also submitted that the respondent accused is a head strong person of the society and he therefore, urges before the Court that the application may be allowed and the bail granted to the respondent accused may be cancelled.

4. Learned APP Mr. Pandya, appearing for the respondent No.1 – State, has also supported the present application and on the information received from the concerned I.O., he has confirmed that the respondent accused is involved in the offence and he is having antecedents also. He has submitted that the Court may pass appropriate orders.

5. I have perused the FIR and the impugned order passed by the Trial Court in the application for regular bail. I have considered the submissions canvassed by learned advocates appearing on behalf of both the sides and the averments made in the application. The learned trial court while granting bail, imposed certain conditions which reads as under :

"Conditions:-

(1) Accused shall not misuse the liberty granted to him and shall not temper with the evidence of the prosecution;

(2) If the accused holds passport, the same shall be deposited in the Court immediately and if he does not hold any passport, affidavit to that effect shall be produced;

(3) Accused shall not leave the State of Gujarat without prior permission of the Court;

(4) Accused shall furnish latest and permanent address of residence to the Investigating Officer and also to the Court and shall not change the residence without prior permission of this Court;

(5) Accused shall mark his presence before the concerned police station on any day of first week of each month between 11 to 1.00 till the chargesheet is filed;

6. It was pointed out by the learned advocate for the applicant before this Court that the respondent accused has never remained present before the trial court during the trial and has committed breach of conditions imposed by the trial court, and even after granting bail, the respondent accused has committed another offence.

However, though this fact was brought to the notice of the trial court, the trial court had not considered all these aspects and granted bail to the respondent accused. Moreover, in the present proceedings also, the notice was issued by this Court, but the respondent accused chosen not to remain present before this

Court. It seems that after releasing on bail, the respondent accused has not co-operated with the investigation and also not present personally before the trial court. However, it is to be noted herein that the State has not preferred any application for cancellation of bail. This application for cancellation of bail is filed at the behest of the original complainant.

7. The ratio laid down by the Apex Court in the catena of decisions that the accused granted bail and entitled to liberty if he is not co-operating with the investigating agency or not remaining present and flouting the conditions imposed upon him while granting bail, then in that case, he is not entitled for any leniency and in that circumstances, the bail is required to be cancelled. The reported decisions of the Apex Court in this regard are summarized as under :

- [1] CBI versus Santosh Karnani and Anr., reported in 2023 SCC OnLine SC 427;
- [2] Deepak Yadav versus State of UP and Anr., reported in [2022] 8 SCC 559;
- [3] Kamla Devi versus State of Rajasthan and Anr., reported in [2022] 6 SCC 725;
- [4] Manoj Kumar Khokhar versus State of Rajasthan and Anr., reported in [2022] 3 SCC 501;
- [5] Brijmani Devi versus Pappu Kumar and Anr., reported in [2022] 4 SCC 497;
- [6] Supreme Bhiwandi Wada Manor Infrastructure Pvt. Ltd versus State of Maharashtra and Anr., reported in [2021] 8 SCC 753;
- [7] Nathu Singh versus State of UP and Ors., reported in [2021] 6 SCC 64;
- [8] Jitendra Taneja versus State of UP and ors., reported in [2021] 5 SCC 308; and
- [9] Union of India versus K.A. Najeeb, reported in [2021] 3 SCC 713.

8. Considering the seriousness of the crime and keeping in mind the criminal antecedents of the accused, the possibility of tampering with the evidence cannot be ruled out which eventually would have a material bearing on the quality of justice. In view of aforesaid facts, request of cancellation of bail granted to the accused is acceded to.

9. For the foregoing reasons and in view of the decisions of the Apex Court as aforesaid, I am of the opinion that the present application deserves to be allowed and it is hereby allowed. The impugned order dated 8.7.2019 passed by the learned Principal District Judge, Navsari in Criminal Misc. Application (Reg) Bail No.529 of 2019 is hereby quashed and set aside. The bail stands cancelled. The Investigating Officer is at liberty to approach the concerned Sessions Court for issuance of non-bailable warrant and if warrant is already issued against the accused person then the Investigating Officer shall take appropriate action for execution of the warrant issued by the Trial Court in accordance with law. Rule is made absolute.