

(2006) 08 GUJ CK 0032

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 1167 of 2006 in Criminal Miscellaneous Application No. 6591 of 2001 & Criminal Miscellaneous Application No. 1168 of 2006 in Criminal Miscellaneous Application No. 6592 of 2001

Mohmadsha Motisha Diwan

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451
Penal Code, 1860 (IPC) — Section 114, 406, 420

Citation : (2006) 08 GUJ CK 0032

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

Bench : Single Bench

Advocate : Vaibhav A. Vyas, for the Appellant; H.M. Prachhak, APP for Respondent 1, for the Respondent

Judgement

A.L. Dave, J.—This application is moved by the applicant for deletion of condition imposed by this Court, requiring him not to enter districts of Anand, Kheda and Vadodara till the trial is over, while releasing the applicant on bail by order dated 18th September, 2001. The order imposing this condition was carried to the Apex Court and was turned down twice. However, the Apex Court reserved a liberty for the applicant on last occasion to move for deletion of the condition if the trial is not over within a period of one year and if such an application is made, the same would be considered by the court on its own merits without being influenced by earlier dismissal of application or by the said order of the Apex Court.

2. Learned advocate for the applicant submitted that the applicant has remained outside the districts for nearly 5 years and even after the last order of the Apex Court, two years have passed. The trial has not yet commenced. The trial is stayed by an order of the Sessions Court because of a revision preferred by the original complainant and one of the co-accused challenging the order passed by the Trial Court u/s 451 of CrPC. The delay is not attributable to the applicant and

the trial is likely to take time. Under the circumstances, the condition may be deleted.

3. Learned advocate for the applicant has reiterated the grounds while learned APP has opposed this application on the ground that for this very purpose, the applicant is repetitively approaching this Court. The Apex Court has deemed it fit not to interfere with the order and, therefore, the applicant has no case on merits for deletion of condition. This application may, therefore, be rejected. The learned APP has also contended that the trial is delayed not at the behest of the prosecution and, therefore, the applicant cannot take advantage of the order of the Apex Court.

4. This Court has taken into consideration rival side contentions. The condition requiring the applicant not to enter districts of Vadodara, Anand and Kheda was imposed considering merits of the case and it was accepted by the learned advocate for the applicant. The said condition was sought to be deleted on earlier occasions and the same request was turned down by this Court. The orders were carried to the Hon"ble the Apex Court and the Apex Court also found no merits for interference in the said order imposing the condition and deletion of the condition was refused. However, on last occasion, the Apex Court observed that the applicant may move such an application, if the trial is not over within one year and delay is not attributable to the applicant.

5. It transpires from the Rojkam that the trial has yet not commenced. The last Rojkam indicates that the Sessions Court has stayed the trial in a revision application which is preferred by the original complainant as well as a co-accused. There can be no attribution to the applicant for the stay granted by the Sessions Court. It cannot be said that the applicant is responsible for the delay that has been caused because of the stay order. Even otherwise, nothing is indicated to attribute any responsibility to the applicant for the delay in trial.

6. The applicant is out of these districts for nearly five years. The applicant is, ordinarily, a resident of Anand district. The condition was imposed considering the merits of the case prevailing then with a view to protect the case of the prosecution. The evidence is already collected. The offences alleged are punishable u/s 406, 420 and 114 of I.P.C. In the opinion of this Court, deletion of condition is not likely to affect or damage the prosecution case any further and, therefore, deletion of condition can be favourably considered.

7. The application is accepted. Condition no. 2(i), imposed while admitting the applicant on bail by order dated 18th September, 2001 in Criminal Miscellaneous Application No. 6591 of 2001, stands deleted. Rule made absolute.

Direct Service permitted.