

(2024) 01 GUJ CK 0128
In the Gujarat High Court

Case No : R/Criminal Appeal (Cancellation Of Bail) No. 2100 Of 2023

Premjibhai Nanjibhai Dafda

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 31-01-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439(2)
Indian Penal Code, 1860 — Section 302

Citation : (2024) 01 GUJ CK 0128

Hon'ble Judges : J. C. Doshi, J

Bench : Single Bench

Advocate : Daxesh D Barot, Harsh R Joshi, Asmita Patel

Final Decision : Dismissed

Judgement

J. C. Doshi, J

1. By way of the present appeal under Section 439(2) of the Code of Criminal Procedure, 1973, the appellant has prayed to quash and set aside the order dated 11.08.2023 passed by the learned 3rd Additional Sessions Judge, Amreli at Dhari in Criminal Misc. Application No.158 of 2023, whereby the learned Session Judge has granted regular bail to the respondents – original accused.

2. Heard learned advocate for the appellant.

3. Learned advocate for the appellant though strongly argued to cancel the bail on submission that the learned Sessions Court while granting bail did not consider the factors to be considered for granting or rejecting the bail, has failed to submit any supervening circumstances being rendered it in conducting to allow fair trial.

4. Learned advocate for the appellant also argued that the learned Sessions Court ought to have considered that the respondents - accused have played active role in commission of offence under section 302 of IPC as they have

inflicted injuries on vital parts of body of deceased. It is submitted that respondent nos.2 and 3 with help of Sarpanch who caught hold of the deceased have caused serious injuries to deceased. It is submitted that learned Trial Court has not considered affidavit of IO and not considered severity of allegations levelled against respondent nos.2 and 3. Therefore, it is submitted that present appeal may be allowed.

5. In *Bhagwan Singh v Dilip Kumar @ Deepu @ Depak* reported in 2023 INSC 7613, Hon'ble Apex Court after considering judgment in case of *Dolat Ram v State of Haryana*, (1995) 1 SCC 349; *Kashmira Singh v Duman Singh*, (1996) 4 SCC 693 and *X v State of Telangana*, (2018) 16 SCC 511, held as follows:

'13. It is also required to be borne in mind that when a prayer is made for the cancellation of grant of bail cogent and overwhelming circumstances must be present and bail once granted cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it inconducive to allow fair trial. This proposition draws support from the Judgment of this Court in *Daulat Ram and others v. State of Haryana* reported in (1995) 1 SCC 349, *Kashmira Singh v. Duman Singh* (1996) 4 SCC 693 and *xxx v. State of Telangana* (2018) 16 SCC 511.'

6. Thus, this Court finds no circumstances to adjudge the impugned order as unjust and contrary to the settled principles of law. The appellant has failed to point out supervening circumstances, which may interfere with the fair trial. It is to be noted that respondent nos.2 and 3 are not named in the FIR and they have played limited role of pelting stones. It is also to be noted that respondent nos.2 and 3 are not main accused.

7. In the case of *Bhagirathsinh Jadeja v/s. State Of Gujarat* [1984 (1) SCC 284], the Hon'ble Apex Court in para 6 has held as under :-

"6. In our opinion, the learned Judge appears to have misdirected himself while examining the question of directing cancellation of bail by interfering with a discretionary order made by the learned Sessions Judge. One could have appreciated the anxiety of the learned Judge of the High Court that in the circumstances found by him that the victim attacked was a social and political worker and therefore the accused should not be granted bail but we fail to appreciate how that circumstance should be considered so overriding as to permit interference with a discretionary order of the learned Sessions Judge granting bail. The High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was for cancellation of the bail. Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. And the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is

likely to abuse the discretion granted in his favour by tampering with evidence. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court."

8. Before parting with the order, I may also refer the observations made in the recent decision by the Hon'ble Apex Court in case of Kekhriesatuo Tep and others Vs. National Investigating Agency reported in (2023) 6 SCC 58. The relevant observation made in para 20 reads as under:-

"20. An interference by an Appellate Court and particularly in a matter when liberty granted to a citizen was being taken away would be warranted only in the event the view taken by the Trial Court was either perverse or impossible. On this limited ground, we find that the appeals deserve to be allowed."

9. Resultantly, present appeal fails and stands dismissed. Notice discharged.