

(2023) 06 GUJ CK 0049
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 13265 Of 2019

Rakeshkumar Laxmichand Jain

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 13-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439(2)
Indian Penal Code, 1860 — Section 306

Citation : (2023) 06 GUJ CK 0049

Hon'ble Judges : Hemant M. Prachchhak, J

Bench : Single Bench

Advocate : K I Kazi, Maithili D Mehta

Final Decision : Dismissed

Judgement

Hemant M. Prachchhak, J

1. By way of present application under Section 439(2) of the Code of Criminal Procedure 1973, the applicant herein - original complainant has challenged the order dated 18th June, 2019 passed by the learned Additional Sessions Judge-Court No.20, City Sessions Court, Ahmedabad in Criminal Appeal No.4181 of 2019 by which the learned Additional Sessions Judge was pleased to release the respondent No.2 herein - original accused on bail.

2. Though the matter is filed in the year 2019, during these 4 years the Court has not even issued a Notice and on various occasions the Court has observed as under :

"23/07/2019 : Stand over to 07.08.2019. Learned APP to take instructions in the matter.

17/03/2020 : Nobody has appeared on behalf of the Applicant. Learned APP Mr.H.K. Patel is present for the Respondent - State of Gujarat.

In the interest of justice the matter is adjourned to 23.3.2020 with a clarification

that if nobody appear for the Applicant on the next date the matter will be decided according to law.

06/04/2023 : The matter was called out twice; however, learned advocate Mr.K.I. Kazi for the applicant was absent on both the occasions. Hence, stand over to 13.06.2023."

3. During these four years, the applicant has never turned up and shown any urgency to the Court and therefore, for these four years the matter is simply rotating on Board and every time the matter is simply adjourned.

4. Heard Mr.K.I. Kazi, the learned counsel appearing for the applicant – original complainant and Ms.Maithili Mehta, the learned APP appearing for the respondent – State.

5. Mr.K.I. Kazi, the learned counsel appearing for the applicant submitted that the respondent No.2 herein – original accused has committed the serious offence and misused the liberty granted at the time of releasing him on bail by the trial Court. He has submitted that the respondent No.2 has not complied with the condition of surrender his passport before the concerned Trial Court. He has urged that the present application be allowed and the bail granted to the respondent No.2 – accused be cancelled.

6. I have perused the contents of the FIR and the averments made in the present application and the order passed by the learned Trial Court. It appears that the learned Trial Court while exercising jurisdiction while granting bail to the respondent accused has made such observations in paragraphs 25 and 26 and except this, no any reason or ground has been recorded. From the bare perusal and reading of the order passed by the learned Trial Court, it seems that the dispute between the applicant and the respondent No.2 was civil in nature and they had executed deed in favour of the respondent No.2 – original accused and thereby transferred the disputed property in favour of the respondent accused. As per the say of the applicant – original complainant it was the oral understanding between the deceased and the accused that as and when the deceased returns the money, the accused would again enter into the agreement and return the property to the deceased. Though the deceased had returned the money, however, the respondent accused had not executed the deed in favour of the deceased and therefore, under such circumstances, the deceased took the untoward step of committing suicide. So far as Section 306 of the Indian Penal Code is concerned, this cannot be termed as an abatement to commit suicide and therefore, after considering all these aspects, the learned Trial Court has rightly exercised powers while granting bail to the respondent accused and thereafter, no any allegation with regard to violation or any breach of peace or tranquility has been made against the respondent accused nor there was any allegation with regard to win over the witnesses or indulge into pressurize the witnesses. The learned Trial Court has granted bail after verifying the relevant documents and the papers of charge-sheet. The cancellation is an exceptional

circumstance where the overwhelming circumstance or any breach of serious condition or in case of any threat or winning over the witnesses. But, in the present case, except the condition that the respondent accused had not surrendered his passport before the I.O. or before the concerned Court, no any other breach is said to have been reported. Even the State has also not preferred any application for cancellation of bail granted to the respondent accused.

7. Considering the facts and circumstances of the case, I am of the opinion that when the respondent No.2 - original accused has been released on bail by the learned Trial Court, he has not committed any breach of conditions imposed by the concerned Court. Therefore, there is no reason to exercise the power under Section 439(2) of the Code of Criminal Procedure and cancel the bail granted in favour of the respondent-original accused. The Court below has not committed any error of facts and law in passing the impugned order and therefore no interference is required to be called for.

8. In view of the above, the present application is meritless and the same deserves to be dismissed and is accordingly dismissed.