
(2013) 10 GUJ CK 0041
In the Gujarat High Court

Case No : Criminal Miscellaneous Application (for Cancellation of Bail) No. 4643 of 2013

State of Gujarat

APPELLANT

Vs

Himanshu Bhikhabhai Patel

RESPONDENT

Date of Decision : 24-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0041

Hon'ble Judges : S.G. Shah, J

Bench : Single Bench

Advocate : Jirga Jhaveri, APP s No. 1, for the Appellant; Tushar N. Vyas, Advocate for the Respondent(s) No. 1, for the Respondent

Final Decision : Dismissed

Judgement

S.G. Shah, J.—This Criminal Misc. Application for cancellation of bail has been preferred by the State being prosecuting agency. By impugned judgment and order dated 27/11/2012 the Addl. Sessions Judge, Vadodara has released the respondent on bail of Rs. 1,00,000/- imposing strict conditions with reference to Karjan Police Station C.R. No. I-192/2009 for the offences punishable under sections, 408, 409, 420, 465, 467, 477[A] and 114 of the Indian Penal Code [IPC]. The respondent was, at the relevant time, Cashier of Vadodara District Cooperative Sugarcane Growers Union Ltd. As per the FIR, he has played role in misappropriating an amount of Rs. 18,55,57,552-74 ps. during the years 2005 to 2008. It is alleged in the FIR that the petitioner has issued forged vouchers and credited false documents for illegal payment from the cooperative society either as an expenditure or as payment to members of the society.

2. When such misappropriation was found by the Auditor, a complaint was registered in the year 2009.

3. At present we are concerned with the legality or otherwise of the impugned order releasing the respondent on bail. Therefore, it would not be appropriate to

scrutinize the evidence in detail so as to arrive at specific conclusion regarding authenticity and validity of evidence on record or innocence of the accused respondent. However, prima-facie it is only to be looked into to verify whether the respondent has committed any offence or not and that whether he should be released on bail or not.

4. On perusal of record, it seems that initially by an order dated 16/3/2010 the petitioner was released on bail of Rs. 25,000/- and when such order was challenged before this Court in Criminal Misc. Application, this Court has remanded the matter back to the Sessions Court for consideration of bail application afresh. Thereafter, such Criminal Misc. Application No. 419/2010 has been decided afresh and impugned order was passed.

5. The law relating to cancellation of bail is now well settled. There are two different set of reasons for cancelling bail [1] because of breach of any terms and conditions of the order of bail and [2] legality and propriety of the order of bail passed by the lower Court. The perusal of record confirms that the prosecuting agency is challenging the order of bail on merits and not on the ground that the respondent has committed any breach of any of the conditions of the bail.

6. I have perused the record in detail. The main allegation against the respondent is with reference to creating forged and false documents for misappropriating huge amount from the cooperative society. However, the record confirms that the offence was committed in the years 2005 to 2008. Whereas the FIR was lodged in the year 2009 after audit report. Therefore, all the material or evidence which is required to prove the case against the respondents - accused are very well available to the Auditor as well as prosecutor and since all such material is in physical form i.e. when the documentary proof regarding commission of any offence is available with the Investigating Officer, then practically there is no scope to allege or argue that the accused is able to tamper with the evidence, which is otherwise against him. So far as other issues like gravity of offence, total punishment, possibility of repetition of similar offence by the accused, etc., are concerned, the fact is clear that the applicant is not hardcore criminal; whereas necessary evidence to prove his guilt in the form of documents which are already scrutinized by the Auditor and audit report is very well available to prove financial irregularity, the law relating to bail categorically confirms that there is no need to continue custody of such accused for long time. Since the complainant and witnesses are also working in their official capacity, there is less chances of tampering or over-reaching the witnesses. So far as the availability of accused for trial is concerned, the trial Court has imposed strict conditions. Whereas so far as the repetition of similar crime or offence is concerned, now it is certain that accused has not to work on the same post and, therefore, such ground is also not in existence.

7. As against that, there is no case of the petitioner that the respondent has committed any breach of any condition of the order of the Sessions Court.

8. If we peruse the impugned order, it becomes clear that the Sessions Court has taken care of each and every details of the record and relied upon several decisions for coming to such conclusion. Discussion of factual details would prejudice both the sides in final trial and, therefore, the same is avoided.

9. The fact remains that at-least one of the accused, namely Kaushal Ramnarayan Sharma has been released by this Court only on bail bond of Rs. 10,000/-, relying upon the case of Sanjay Chandra Vs. CBI, , wherein the Hon''ble Apex Court has released the accused who have committed biggest scam of the nation, relying upon the settled principle of law relating to concept of bail. As against that, the trial Court has released the respondent on furnishing bail bond of Rs. 1 lac with strict conditions. Reference of several citations would unnecessarily burden the order. However, it is settled legal position that only because of amount involved in the financial offences, bail cannot be refused. Therefore, I do not see any substance or reason in the application and hence the same is dismissed. Rule is discharged.