
(2014) 02 GUJ CK 0008

In the Gujarat High Court

Case No : Criminal Miscellaneous Application (for Cancellation of Bail) No. 13584 of 2013

State of Gujarat

APPELLANT

Vs

Mahesh Kumar Kishan Chand Lohana and 1 Another

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439 439(2)
Penal Code, 1860 (IPC) — Section 114 302 304B 498A

Citation : (2014) 02 GUJ CK 0008

Hon'ble Judges : S.H. Vora, J

Bench : Single Bench

Advocate : Neeraj Soni, app, for the Appellant; Zubin F. Bharda, Advocate for Respondent(s) No. 1-2, for the Respondent

Final Decision : Dismissed

Judgement

S.H. Vora, J.—The State of Gujarat, by present Criminal Misc. Application for cancellation of bail filed u/s 439(2) of the Code of Criminal Procedure, 1973 challenged the order passed below Exh. 6 in Criminal Misc. Application No. 144 of 2013 on 15.04.2013 by the learned Sessions Judge, Navsari, whereby, the opponents-accused were granted bail in connection with the offence registered before Navsari Town Police Station being I-C.R. No. 28 of 2013 for the offence punishable under sections 302, 498A and 114 of the Indian Penal Code r/w. Sections 3 and 7 of the Prohibition of Dowry Act. Heard the submissions of learned A.P.P. Mr. Soni for the applicant-State.

2. Brief facts leading to filing of the complaint can be stated thus:-

2.1. The complainant-father of the deceased filed aforesaid complaint inter alia alleging that the daughter of the complainant was married to accused No. 1 prior to about four years of incident and the husband of the deceased was staying with the accused persons. Thereafter, the deceased had, time and again, went to the home of complainant and complained about demand of dowry by the accused

persons. It is alleged that on account of harassment being meted out to the deceased, she was burnt by herself and was admitted in the hospital where, she succumbed to injuries. It is alleged that thus, the accused persons committed offence of giving ill-treatment and thereby, caused murder of the deceased.

3. In this case, the learned Sessions Judge, after considering the papers of charge sheet and after hearing the submissions of both the sides, released the opponents-accused on bail by imposing suitable conditions.

4. Cancellation of bail is a serious matter and once bail is granted, it can be cancelled only in the circumstances and for the reasons, which have been clearly stated by the Hon''ble Apex Court in a catena of judgments. It would be appropriate to refer to the decision rendered in the case between *Puran Vs. Rambilas and Another* etc. etc., wherein, the appellant therein was charged under Sections 498A and 304B of the IPC. The Additional Sessions Judge, Nagpur released the appellant therein, on bail. The High Court cancelled the bail granted to the appellant. The said order was under challenge before the Hon''ble Apex Court and therein, it is observed by the Hon''ble Apex Court that "it was argued that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. It was argued that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. Reliance was placed on *Dolat Ram v. State of Haryana* 3 in support of this submission. This court observed that in *Dolat Ram*, it was clarified that the above instances are merely illustrative and not exhaustive and one such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime and that too without giving any reasons. This court observed that such an order would be against the principles of law and, interest of justice would require that such a perverse order be set aside and bail be cancelled. This court found that inasmuch as the Sessions Court had ignored vital materials while granting bail, the High Court had rightly cancelled the bail. It was further observed that such orders passed in heinous crimes would have serious impact on the society and an arbitrary and wrong exercise of discretion by the trial Court has to be corrected."

5. Section 439 of the Code confers very wide powers upon the Court of Sessions regarding bail. While granting bail, the Court considers the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds. Each criminal case presents its own factual scenario and keeping in mind the facts of each case, the Court is required to only opine as to whether there exists prima facie case

against the respondent accused. Whereas while cancelling the bail u/s 439(2) of the Code, the Court will have to address to the points whether the accused is likely to temper with the evidence or attempt to interfere with the course of justice or to evade the due course of justice. Apart from it, in the matter of cancellation, the State/complainant requires to point out serious infirmities in the order and such infirmities resulted into miscarriage of justice. It appears that the learned Sessions Judge has assigned cogent and convincing reasons in para 6 of the impugned order and no case is made out to interfere with the impugned order. No other contention has been raised so as to bring case within four corners of provisions of section 439(2) of the Code. Therefore, this Court is not inclined to entertain present Criminal Misc. Application, as the learned trial Judge has not committed any illegality or perversity in passing the impugned order and therefore, present Criminal Misc. Application is hereby rejected. Rule is discharged.