

(2013) 12 GUJ CK 0181
In the Gujarat High Court

Case No : Criminal Miscellaneous Application (for Cancellation of Bail) No. 16712 of 2013

State of Gujarat

APPELLANT

Vs

Narendra Gaurishankar Tiwari

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0181

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

Bench : Single Bench

Advocate : L.R. Poojari, app, for the Appellant; Yatin Soni, for the Respondent

Judgement

S.H. Vora, J.—The applicant-State, vide this application filed u/s 439(2) of the Code of Criminal Procedure, 1973 (for short, the "Code") challenges the order dated 01.06.2013 passed by the learned Additional Sessions Judge, City Sessions Court, Court No. 16, Ahmedabad in Criminal Misc. Application No. 2135 of 2013 whereby, the learned Additional Sessions Judge, by exercising powers conferred u/s 438 of the Code, enlarged the opponent on anticipatory bail on certain terms and conditions. Brief facts leading to filing of this application are stated thus.

1.1. According to the complainant, the opponent and other co-accused person, by way of hatching a criminal conspiracy and with a view to grab the land of the complainant bearing Survey No. 164/2 at village: Tandalja Sim of about 38655 sq. mtrs., created two bogus banakhat on stamp paper of Rs. 20/- each showing therein as if the said land has been purchased from Bhailalbhai Balubhai Patel for the sum of Rs. 40 lacs by registered sale deed and to show that such sale deed was executed in the old date, a stamp paper of Rs. 20/- was purchased in name of one Ms. Jiviben Somabhai Parmar in the year 1996. It is alleged in the F.I.R. that by way of creating forged banakhat in the old dates, when the present opponent-accused, who, by profession, was advocate, made his signature and other co-accused, who was by profession of Executive Magistrate, made signature as "Before Me" and thereafter, used the said bogus and forged

banakhat as if it was true, correct and genuine. It is also alleged in the complaint that the stamp vendor had also destroyed the stamp register for the period between 1990 and 1996 and thereby, destroyed the evidence. According to complainant, in the facts of the case, present opponent-accused made signature as identifying bogus persons and thus, the opponent-accused participated in creating and forgery of bogus and created documents and thus, committed the aforesaid offence.

2. Having come to know about lodging of the complaint by one Mr. Daksheshbhai Bhagwanbhai Patel, the opponent filed the aforesaid Criminal Misc. Application praying to enlarge him on anticipatory bail before the learned Additional Sessions Judge, Ahmedabad. The learned Additional Sessions Judge, after considering the application as well as papers placed on record before him, exercised his powers u/s 438 of the Code and accepted the application of the opponent and released him on anticipatory bail by impugned order. Hence, the present petition.

3. Learned A.P.P. Mr. L.R. Poojari for the applicant-State submits that the learned trial Judge has not dealt with important aspect of giving identification of the person, who, in fact, was bogus person and further, failed to consider similar kind of offence which came to be registered against the present opponent-accused with various police stations. Therefore, the learned Additional Sessions Judge ought not to have enlarged the opponent-accused on bail.

4. While accepting the application, the learned trial Judge has considered the fact that the other accused, who was stamp vendor and retired Executive Magistrate are released on bail and, therefore, the opponent-accused was extended benefit of parity. Similarly, the learned Sessions Judge has also considered the fact that the offence in question was triable by the Metropolitan Magistrate Court.

5. After hearing submissions made by learned A.P.P. appearing for the applicant and considering the parameters laid down by the Hon''ble Apex Court in the case of Bhagirathsinh Judeja Vs. State of Gujarat, and in the case of Dolat Ram and Others Vs. State of Haryana, with regard to exercise of power u/s 439(2) of the Code, it cannot be said that other than legal consideration was weighed with the learned Addl. Sessions Judge for exercising powers and keeping in mind the law laid down by the Hon''ble Apex Court in case of Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, the opponent-accused was granted anticipatory bail and therefore, no case is made out for this Court to exercise powers u/s 439(2) of the Code.

6. Considering the ratio laid down by the Hon''ble Apex Court in various decisions, it is clear that powers of appellate Court are different than granting bail by the trial Court. In case of Dolatram (supra), the Hon''ble Apex Court has held that bail once granted should not be cancelled in mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. Therefore, I am of the opinion

that the opponent accused has been released on anticipatory bail and he has not committed breach of condition imposed by the trial Court. Furthermore, pendency of other offences is weak ground to refuse the bail and hence, non-consideration of other offences by the learned Additional Sessions Judge is not legal and valid ground to exercise power u/s 439(2) of the Code and cancel the anticipatory bail granted in favour of the respondent No. 1 accused herein. In view of above, present application is meritless and therefore, the same deserves rejection and accordingly, it is rejected. Notice is discharged.