

(2022) 08 GUJ CK 0101

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 18367 Of 2017

??State Of Gujarat

APPELLANT

Vs

Rajkumar @ Ravi Harishbhai Patadiya, & 6 Other(S)

RESPONDENT

Date of Decision : 26-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439(2), 482

Indian Penal Code, 1860 — Section 354(A)(1)(I), 354(B), 506(2)

Protection Of Children From Sexual Offences Act, 2012 — Section 7, 9(L), 10, 13(C), 14, 17

Information Technology Act, 2000 — Section 66(A), 67(B)

Citation : (2022) 08 GUJ CK 0101

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : Chintan Dave, Kamlesh H Shah

Final Decision : Dismissed

Judgement

Ashutosh J. Shastri, J

[1] The present application is filed under Section 439(2) read with Section 482 of the Code of Criminal Procedure seeking cancellation of regular bail, which has been granted to the respondents - accused by the Additional Sessions Judge, City Civil and Sessions Court, Ahmedabad in Criminal Misc. Application No. 2393 of 2017 on 27.04.2017.

[2] The case of the prosecution is that a complaint came to be filed before Vadaj Police Station being C.R.No.I-109 of 2017 at the instance of one Ms. Poojaben Pravinbhai Sumera alleging that accused in connivance with each other in spite of complainant being minor has allegedly molest her modesty and taken photographs and video in mobile and also threatened her family members and thereby committed offence punishable under Sections 354(A)(1)(I), 354(B), 506(2) of the Indian Penal Code, Sections 7, 9(L), 10, 13(C), 14, 17 of the POCSO Act and Sections 66(A), 67(B) of the I.T. Act. On account of the said

complaint, the present respondents filed an application for bail, which was registered as Criminal Misc. Application No.2393 of 2017 in which the State authority had filed a reply opposing the same but by imposing suitable conditions, the learned Additional Sessions Judge, City Civil Judge & Sessions Court, Court No.2, Ahmedabad vide order dated 27.04.2017 was pleased to grant regular bail to these respondents and it is this order of April, 2017 is made the subject matter of present Criminal Misc. Application.

[3] It appears from the record that the original order impugned is of 27.04.2017 and the Court on entertaining this application was pleased to issue notice upon respondents vide order dated 24.07.2017 and thereafter, it appears that till 2022 no concrete steps appears to have been taken by State authority to see that the present order be examined promptly and it is only in the month of May, 2022 onwards the present application is being placed on board from time to time and it is with this background, the Court has heard the learned advocates appearing for the respective parties.

[4] Mr. Chintan Dave, learned APP appearing on behalf of the applicant - State has submitted that these respondents have committed a grievous offence as alleged and has taken out the videograph and the photographs and thereby established physical relationship. Such kind of serious offence ought not to have been taken so lightly by learned Session Judge while considering the request for bail. It has been submitted that on several occasions by giving false promises about marriage time and again either on the motorbike or rickshaw taken to various places including Vastrapur Lake as well and at that spot, the photographs and selfies were taken by these respondents accused in connivance of each other and thereafter, an attempt was made to physically abuse the complainant. It is only on account of serious cries and shouting, these respondents accused have sent the complainant in rickshaw to her home and at that moment serious threats have been administered of sprinkling acid and in this manner, the respondents accused in connivance has committed an offence, which has led to the filing of complaint and in view of this the learned Sessions Judge ought not to have exercised discretion leniently. He, therefore, submitted that such respondents should not be allowed to move around in the public and they be sent at appropriate place by cancellation of bail.

[4.1] However, on being asked, Mr. Chintan Dave, learned APP has submitted that this granting of bail order is of April, 2017 and so far it is not the case of authority that they have committed any breach of conditions, which have been imposed upon. At this stage has submitted that there are several offences similar in nature filed against some of the accused persons including main accused Vikrambhai but in this particular case breach of condition is not the case of State authority or misuse of liberty and as such has left it to the discretion of the Court.

[5] As against this, Mr. Kamlesh H. Shah, learned advocate appearing for the respondents has submitted that these accused persons have been wrongly arraigned in the prosecution and at a convenient point of time the complaint has

been filed particularly when the daughter's marriage of accused No.6 was scheduled in the month of May, 2017. It has been submitted that there is a gross delay in lodging the complaint since alleged incident is of December, 2016 but then the complaint has been lodged on 12.04.2017 without there being any explanation about delay. It has been submitted that on account of love affair the incident in question is alleged to have occurred and made an attempt to rope in all the family members on the eve of marriage being scheduled, as stated above. The allegations leveled in the complaint are refuted by learned advocate on instruction and has submitted that in false and frivolous complaint, the respondents have been arraigned.

[5.1] Mr. Shah, learned advocate has further submitted that after considering the relevant material available on record, the learned Sessions Judge has exercised due discretion vested in law and passed an order way back on 27.04.2017. It appears from the record that though the Hon'ble Court passed initial order of issuance of notice in the month of July, 2017 but thereafter, for a considerable long time, the applicant State has not moved the matter at all and it is only in the month of May, 2022 on-wards an attempt is made to cancel the bail though there is no misused of liberty nor any violation of any of the condition in specific. It has been further submitted that the main case is at the stage of recording of evidence and the trial has already set in motion and as such in the absence of any distinguishable circumstance, the bail which has already been granted way back in April, 2017 may not be canceled and it has been submitted that it is also not a case of applicant State authority that these respondents are not cooperating the adjudication of trial. Hence, in the absence of any supervening circumstance, the bail once has been granted may not be canceled.

[6] Having heard learned advocates appearing for the respective parties and having gone through the material placed on record, it appears that the bail to these respondents have been granted after considering the material placed before the learned Sessions Judge way back in April, 2017. It is not the case of State authority that any of the condition is violated by the respondents in any manner and further it is also a circumstance material to be taken note of is that the trial has already been commenced and it is at the stage of recording of evidence. At a relevant point of time, the complainant was aged about 16 years and considering the overall material, the learned Sessions Judge has exercised the discretion vested in law. Hence, when appropriate conditions have already been imposed upon and there is no circumstance sufficient enough to cancel the bail is agitated, this Court is of the opinion that bail once has been granted in the absence of any adverse circumstance the same may not be canceled.

[7] The law on the issue is amply clear by catena of decisions but the decision last in line if taken note of, it emerges that this is not a fit case in which the bail once granted can be canceled. Had it been a prompt steps taken by State authority in the year 2017 or 2018 itself to press the request diligently probably the Court might have considered but after a lapse of long period of time, it is not

just and proper to cancel the bail in the absence of any strong connecting material about such cancellation.

[8] At this stage, a reference be made to the decision delivered by Hon'ble Apex Court in the case of Ms. X. v State of Telangana & Anr., reported in (2018) 16 SCC 511, whereunder paragraphs 14, 15 and 18 held as under:

"14. In a consistent line of precedent this Court has emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In adverting to the distinction, a Bench of two learned Judges of this Court in *Dolatram v State of Haryana* observed that:

"4. Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so 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 the bail, already granted. Generally speaking, the grounds for cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a 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.

15. These principles have been reiterated by another two Judge Bench decision in *Central Bureau of Investigation, Hyderabad v Subramani Gopalakrishnan*⁵ and more recently in *Dataram Singh v State of Uttar Pradesh*:

"23. It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a 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.

18. For the above reasons, we hold that the order of the High Court allowing the application for bail cannot be faulted. Moreover, no supervening circumstance has

been made out to warrant the cancellation of the bail. There is no cogent material to indicate that the accused has been guilty of conduct which would warrant his being deprived of his liberty.”

[9] Yet another decision delivered by Hon'ble Apex Court in the case of Myakala Dharmarajam & Ors., v. State of Telangana & Anr., reported in (2020) 2 SCC 743, whereunder paragraph 8 held as under:-

“8. In Raghbir Singh v. State of Bihar² this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.”

[10] Yet another decision also deserves to be referred is the decision in the case of Guria, Swayam Sevi Sansthan versus State of Uttar Pradesh and others reported in (2009) 15 SCC 75 wherein relevant para 11 would clearly indicating that at this stage its difficult to cancel bail once granted longback.

[11] A conjoint effect of this proposition and the case having not been made out by the State authority to set aside the order of April, 2017, this Court is of the considered opinion that application being devoid of merit deserves to be dismissed. Accordingly, the same stands dismissed. Notice is discharged.