

(1965) 09 GUJ CK 0017
In the Gujarat High Court

Case No : Criminal Revision Application No. 207 of 1965

The State of Gujarat

APPELLANT

Vs

Govindlal Manilal Shah

RESPONDENT

Date of Decision : 15-09-1965

Acts Referred:

Criminal Procedure (Amendment) Act, 1955 — Section 497(1)
Criminal Procedure Code, 1898 (CrPC) — Section 204, 242, 251, 252, 426
Prevention of Corruption Act, 1988 — Section 5(2)

Citation : AIR 1966 Guj 146 : (1966) CriLJ 746 : (1965) GLR 806

Hon'ble Judges : J.B. Mehta, J

Bench : Single Bench

Advocate : H.M. Choksi, Govt. Pleader, for the Appellant; D.C. Trivedi, Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

1. The State of Gujarat has filed this Revision Application against the orders passed by the Sessions Judge, Banskannath at Palanpur, on 11th

March 1966 whereby the learned Sessions Judge released the opponent Govindlal Manilal Shah of Deesa on bail in anticipation of his arrest. The

opponent Govindlal had preferred an application, being Misc. Application No. 5/65, before the learned Sessions Judge, Banskannath at Palanpur,

for releasing him on bail on the ground that one Popatlal Takershi had given a complaint against him to the police for the offence punishable u/s 5(2)

of the Prevention of Corruption Act and as after completing the investigation the police authorities had obtained sanction of the Government to

prosecute him for the said offence. He had, therefore preferred an application for releasing him on bail in anticipation of his arrest. The learned

Sessions Judge held that in view of the amendment made in Section 497 by

adding the words ""suspected of the commission of"" the powers to release on bail had been enlarged and such anticipatory bail could be legally granted. Accordingly, the learned Sessions Judge had released the opponent Govindlal Manila) Shah on bail on his executing a bond for Rs. 1,000 and on furnishing one solvent surety for the like amount in anticipation of any warrant that may be issued against him.

2. The State has challenged the said order in the present revision petition

3. At the hearing as nobody appeared for the opponent, I had requested Advocate Mr. D C Trivedi, to appear as amicus curiae and I am very much beholden to him for his valuable assistance rendered in this case.

4. On the question whether a person could be released on bail in anticipation of his arrest, there appears to be some conflict of authorities, but the preponderance of judicial opinion is in favour of the view that no such anticipatory bail could be granted. It is implicit in the very definition of the word "bail" that the person must be under some sort of restraint and the order of releasing a person on bail would set free a person who was under arrest, detention or under some kind of restraint by taking security for his appearance. The powers to grant such bail are mentioned in Chapter 39 and Section 426 of the Code and it is well settled that these provisions are exhaustive of the powers of bail and the Court would have no power except which is specifically provided therein. The power of such anticipatory bail is not one that is expressly mentioned in any of these provisions.

5. Both in Sections 495 and 497 the provision is made for release on bail of a person who is arrested or detained without a warrant by an officer in charge of a police station or appears or is brought before a Court. The controversy mainly centres round the expression ""appears"" and a construction is sought to be put on that expression that it would include even a voluntary appearance of a person who is accused or suspected of an offence as by such appearance he must be deemed to have surrendered to the custody of the Court. This term will have to be interpreted in the context of a bail provision where some restraint is implicit in the very concept of bail. A person who is a free person and who is at liberty to go wherever he likes cannot ask for bail. Such a construction would therefore, be anomalous in the context of bail. The expression "must take colour" from the other words with which it is associated especially when it is used in the

context of a bail and when throughout the Code the expression appears or is brought before the Court in Sections 204, 242, 251, 252 etc., has been used in the sense of a person who is accused of an offence and who is brought before the Court by a police officer or who voluntarily surrenders himself, in pursuance to or because of some warrant of arrest issued against him, Mere appearance of a person by itself before a Court is, therefore, not sufficient. There must be accusation or at least suspicion against him on credible information of his having been involved in an offence, and further the person must either be in legal custody or a warrant must have been issued against him. Much emphasis was laid on the fact that in Section 497(1) after the words "accused of" the words "was suspected of the commission of the offence" had been added by the amendment by Act 26 of 1955. That amendment would not make any difference because in the context of bail a person must be under some restraint and it would not be sufficient that there is only accusation or suspicion of the commission of the offence against him. Similarly, the latter part of Section 498(1) which confers power on the High Court or the Court "t Session to direct that any person be admitted to bail in any case whether there may be an appeal on conviction or not also would not confer power on the said Court to enlarge a person in bail against whom there was no restraint whatsoever.

6. The earliest authority on this point is of the Full Bench of the Lahore High Court in *Hidayat Ullah v. The Crown*. 1949 LabIC 77 (FB) where Cornelius J. (as he then was) relied upon the provision of Section 498(1) as giving a wide power to the High Court to enlarge a person on bail who was suspected of an offence for which he might be arrested by a police officer or a Court but that power would have to be only cautiously exercised. In that case Cornelius J. had observed at p 80 that mere appearance before a Court was not sufficient; for the least that was necessary for the exercise of the power of depriving the subject of his liberty was that the latter should either have committed a crime which involved a result or that there should be a reasonable suspicion or reliable information against him that he had done any such act. The entire decision proceeds upon assumption of the wide amplitude of the expression used in Section 498(1) that the High Court could direct that any person be admitted to

bail. This decision would be clearly inconsistent with the observations of their Lordships of the Privy Council in AIR 1945 94 (Privy Council) .

where such a wide meaning was not given to the expression any person." This decision was therefore, disapproved , in the decision of the Full

Bench of the East Punjab High Court in Amar Chand v. Crown. AIR 1950 EP 53 (FB), on the ground that this decision was in conflict with the

decision of the Privy Council In that decision Kapur J. at p. 64 aptly remarked that a person who was not already under some kind of restraint

could not be put under restraint by being enlarged on bail and that the Code contained no such provision whereby what was termed as

anticipatory bail" could be given. In Musafaruddin v. State of Hyderabad AIR 1953 Hyd 219 Jagan-mohan Reddy, J. speaking for the Full

Bench held that a person accused of any non-bailable offence could not apply for bail unless he was liable to be arrested in execution of a warrant

of arrest issued or was ordered to be arrested, relying on the concept of bail which was ordinarily understood to mean "to set free a person who

was under arrest, detention or was under some kind of restraint by taking security for his appearance" The Division Bench of the Andhra Pradesh

High Court consisting of Public Prosecutor, Andhra Pradesh Vs. G. Manikya Rao, , also took the same view relying on the concept of bail and

held that the High Court or the Sessions Court had no power to grant bail to a person who was not arrested on any charge of a non-bailable

offence, or for whose appearance a warrant had not been issued but who merely apprehended that he might be arrested and had appeared in the

Court All these decisions have been exhaustively considered finally by the Division Bench of the Madhya Pradesh High Court consisting of State

of Madhya Pradesh Vs. Narayan Prasad Jaiswal, . In that case at P 281 it was held that the view taken by Abdul Karim Khan Vs. State of

Madhya Pradesh, on the basis of 1955 amendment in allowing anticipatory bail was overruled by holding that the said view gave no effect to the

meaning of the word "bail" and to the fact that the word "appears" took its colour from the provisions in which it had been used and which dealt

with the release of a person on bail. that is to say, the release of a person from actual or threatened custody under an order of arrest issued against

him it was therefore, held that under Sections 496, 497 and 498 of the Code bail could not be granted to a person who had not yet been arrested

for an actual charge of any offence or even on suspicion of his complicity in any offence and who was not required to surrender to any custody

under any order of arrest but who apprehended that they would be arrested as persons accused of or suspected of the commission of an offence It

seems that the same view has been taken by the Rajasthan High Court in *Juhar Mal and Another Vs. The State*, . and by the Calcutta High Court

in *Amjad Sheik Vs. The State*, . The only contrary decision to be found, as I earlier mentioned, was of the full Bench of the Lahore High Court in

AIR 1949 Lah 77 (FB) which clearly proceeded on an erroneous interpretation of the wider powers of bail u/s 498(1) and which view was clearly

in conflict with the decision of the Privy Council. *Abdul Karim Khan Vs. State of Madhya Pradesh*, had taken the view that there was some

restraint when in a non-bailable offence there was a threat hanging on the head of the accused and there was the power of a police officer to arrest

a person and such restraint was even sufficient. This view has been overruled by the Division Bench Judgment in AIR 1963 MP 270 as I have

already mentioned This view also appears to have been followed in *Sundersingh v The State* AIR 1954 Hyd 55. There also it should be noted that

that judgment was clearly in conflict with the Full Bench decision of that Court in AIR 1953 Hyd 219 (FB) (Supra) Therefore, it is clear that it is

almost a settled view of almost all the High Courts in the country that the person who is merely accused or suspected of an offence could not by

appearing in Court ask for bail unless he was actually under arrest or a warrant of arrest had been issued and he being liable to arrest he had

appeared before the Court The learned Sessions Judge was, therefore, wrong in granting the application for such anticipatory bail as he had no

jurisdiction to grant bail at this stage

7. In the result, I allow this revision application, set aside the order of the learned Sessions Judge releasing the opponent Govindlal Nanilal Shah on

bail in anticipation of his arrest The bail bond taken from him shall stand cancelled. Rule accordingly made absolute.