

(1975) 11 GUJ CK 0002
In the Gujarat High Court

The State of Gujarat

APPELLANT

Vs

Hirasing Kesarising Solanki

RESPONDENT

Date of Decision : 06-11-1975

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 120B, 395, 420

Citation : (1977) CriLJ 104 : (1976) GLR 844

Hon'ble Judges : A.N. Surti, J

Bench : Single Bench

Judgement

A.N. Surti, J.—This Criminal Application is directed against the judgment and order passed by the learned Sessions Judge, Baroda in Criminal Revision Application" No. 51 of 1975 filed by the State for cancelling a bail order passed in favour of the present opponent by the learned Judicial Magistrate, First Class, IIIrd Court, Baroda in Bajva Police Station C.R.III-199/75.

2. A few relevant facts giving rise to the present petition may be stated in brief:

3. The opponent P.S.I. along with some others are accused for the commission of offences" punishable under Sections 395, 420 and 120B of the Indian Penal Code. It was the prosecution case that on the day in question the opponent who was working as the P.S.I. at Natar Police Station, took the assistance of two police constables, abused his position of the Sub-Inspector of Police and formed a conspiracy of cheating certain persons. It was further alleged by the prosecution that at the nick of time, when his collaborators were engaged in inducing the victims to part with money, opponent P.S.I. appeared on the scene of offence, and by use of force, snatched away currency notes from the victim. Shortly stated on these facts, it was alleged that the opponent P.S.I. had committed the aforesaid offence.

4. During the pendency of the trial before the learned Magistrate, a bail application was presented before the learned Magistrate, First Class, IIIrd Court,

Baroda on August, 18, 1975 and it was submitted that the opponent P.S.I. was sick. The learned Magistrate released the P.S.I. on bail of Rs. 1,500/-.

5. Being aggrieved by the aforesaid order releasing the opponent P.S.I. on bail the State filed the Criminal Revision Application No. 51 of 1975 in the Court of the learned Sessions Judge at Baroda.

6. On behalf of the State two affidavits of Police Officers were filed which indicated that the opponent was not sick which would have required him to remain in hospital. As a matter of fact, no medical certificate was produced before the learned Magistrate showing the nature of sickness suffered by the opponent P.S.I. Only out-door case papers from the hospital were produced to show the opponent P.S.I. was sick.

7. Before the learned Sessions Judge, it was urged on behalf of the opponent P.S.I. that Sessions Court has got powers to cancel the bail. But Sessions Court was not sitting as the Court of appeal or Court of revision against the order passed by the learned Magistrate. It was further submitted on behalf of the opponent P.S.I., that even if the Magistrate had erred in releasing the opponent P.S.I. On bail, and even if the Sessions Court came at a different conclusion on the same facts it would not be proper for the Sessions Court to cancel the bail order which was granted in favour of the opponent P.S.I. by the learned Magistrate. It was urged on behalf of the opponent P.S.I., that after the passing of the Bail order in favour of the opponent P.S.I. there was no subsequent development which would justify the cancellation of the bail order.

8. The learned Sessions Judge in course of the impugned order observed as follows :

Apart from proving that the opponent was not sick and apart from proving that the opponent successfully hoodwinked the learned Magistrate in passing an erroneous order, these affidavits do not show that the opponent after his being released on bail, has done something which would make him forfeit his right to be on bail.

In paragraph 5 of the impugned order the learned Sessions Judge observed as follows :

I am tempted to agree with Mr. Parmar that the learned Magistrate has not properly applied his mind before passing the order. The alleged sickness of the opponent was not such which could not have been taken care of, if the opponent were to be in custody. It was also not such that it would require personal attention of some relatives of his own. It also appears that the fact that the opponent, who is an Officer of the law enforcing agency, had himself participated in a crime, had totally escaped the attention of the learned Magistrate. However strong the feelings of this Court may be against the opponent having been released on bail, it would be chary to exercise its powers u/s 439(2), when no new circumstances subsequent to the opponent being released on bail have been

brought forth. I am therefore, constrained to reject the application. But before that, this Court deems it its duty to observe that if there was a fit case in which the accused of the status of the opponent should not have been released on bail on such a flimsy ground and in a case which is exclusively triable by the Court of Session, then it was the present case.

As a result of his aforesaid reasoning and observation it is strange that the learned Sessions Judge rejected the application filed by the State for the cancellation of the Bail order which was passed in favour of the opponent P.S.I. It is under these circumstances that the State of Gujarat has filed the present petition under Article 227 of the Constitution.

9. Mr. B.J. Shelat, learned Public Prosecutor appearing on behalf of the State has very strongly urged that the impugned order has patently resulted into a gross miscarriage of justice. Mr. Shelat also urged that the statutory language employed by Sub-section (2) of Section 439 of the Code of Criminal Procedure, 1973 confers powers on the Court of Session to cancel a bail order and to direct that the person may be arrested and commit him to custody. He also submitted that the learned Sessions Judge clearly committed an error in law in taking the view that Section 439(2) contemplates that before the Sessions Judge can cancel the bail order there should be new circumstances subsequent to an offender being released on bail by the learned Magistrate. He also urged that this is a gross case where opponent P.S.I. who is supposed to be the custodian of law and order chose to be an offender for snatching currency notes from the victim by use of force and by taking the assistance of his subordinates. Mr. Shelat submitted that in a case of this nature, the cause of justice would suffer and the provisions of Sub-section (2) of Section 439 would be made nugatory if opponent accused continues to be released on bail. He also urged that under Article 227 of the Constitution it is the duty of this Court to see that the Tribunals and subordinate Courts function justly and properly within the bounds of their jurisdiction. In substance, Mr. Shelat submitted that Sub-section (2) of Section 439 confers such powers on the Sessions Court to cancel the bail orders and in the instant case, the learned Sessions Judge obviously erred in not exercising his jurisdiction u/s 439(2) of the Code of Criminal Procedure, 1973 for the reasons mentioned in the impugned order.

10. Mr. H.K. Thakore, learned Advocate, appearing on behalf of the opponent P.S.I. submitted that, in the instant case, the learned Magistrate had exercised his discretion to release the opponent P.S.I. on bail and the learned Sessions Judge, for reasons set out in the impugned order did not interfere with the discretionary order passed by the learned Magistrate. In view of these facts, Mr. Thakore submitted that, this Court should be extremely reluctant to interfere with the impugned order passed by the learned Sessions Judge. Mr. Thakore also submitted that this Court while exercising its jurisdiction under Art. 227 of the Constitution, will sparingly exercise its powers to interfere with the discretionary order passed in such cases.

11. I have carefully considered the submissions made at the Bar. In the instant case, it was the prosecution case that at the nick of time when the collaborators of the opponent P.S.I. were engaged in inducing the victim to part with money, opponent P.S.I. appeared on the scene, and by use of force, snatched away currency notes. It is also clear before me that no medical certificate was produced before the learned Magistrate showing the nature of sickness suffered by opponent P.S.I. at the relevant time. In the instant case, opponent P.S.I. who was the custodian of law and order not only took the assistance of his subordinates to commit the crime in question but used force and snatched currency notes from the victim. In the instant case, obviously the P.S.I. opponent misused his position of a Sub-Inspector of Police. Prima facie he was not justified in taking the assistance of his subordinates for snatching away currency notes from the victim and to suddenly appear on the scene and to snatch currency notes from the victim when the offence was being committed. Thus, prima facie, the aforesaid circumstances are sufficiently eloquent to my mind to come at a conclusion that this is not a case where the learned Magistrate should have exercised his discretion in favour of opponent P.S.I. for releasing him on bail. I wish to make it clear that my aforesaid observations are purely for the purpose of deciding the petition before me.

12. As stated above, Mr. Shelat submitted that Sub-section (2) of Section 439 confers powers on the Sessions Court to cancel the bail order and to direct that any person released on bail under Chapter 13 of the Code of Criminal Procedure 1973 be arrested and commit him to custody. Sub-section (2) of Section 439 provides as follows:

A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

The statutory language employed by the aforesaid Sub-section (2) of Section 439 is clear to my mind to come to a conclusion that the Court of Session may direct any person who has been released on bail to be arrested and commit him to custody. Of course, the Sessions Judge in exercising that power must necessarily exercise that discretion judicially and on well established principles. But in any view of the matter, no fetter is put on the powers of the Sessions Court to cancel a bail order by the statutory language employed in the section. In my view, the learned Sessions Judge patently erred in taking the view that unless there are some new circumstances taking place subsequent to the offender being released on bail, then only, the Sessions Court can direct the arrest of the offender and to commit him to custody. To read Sub-section (2) of Section 439 of the new Criminal Procedure Code in such a manner would be an obvious and perverse reading of the section, and such a reading of the section, to my mind, would result into grave and patent miscarriage of justice. In the present case, two police officers had filed necessary affidavits and the affidavits did show that opponent P.S.I. was not sick at the relevant time. The learned Sessions Judge, having observed in course of his judgment, that opponent had successfully

hoodwinked the learned Magistrate ought to have cancelled the bail order passed in favour of opponent P.S.I. by the learned Magistrate. The learned Sessions Judge obviously committed an error in taking the view that the affidavits did not show that the opponent P.S.I. after his being released on bail has done something which would make him forfeit his right to be on bail. The learned Sessions Judge, as stated above, has also observed that the learned Magistrate has not properly applied his mind before passing the order and that the alleged sickness of the opponent was not such which could not have been taken care of, if the opponent were to be in custody. It is needless to emphasise once again that in the instant case no medical certificate was produced before the learned Magistrate showing the nature of sickness suffered by the opponent P.S.I. at the relevant time.

13. Having regard to the facts and the circumstances of the case, I am clearly of the opinion that the learned Sessions Judge in the instant case failed to exercise his jurisdiction which Sub-section (2) of Section 439 of the new Criminal P.C. has conferred on him, and if the learned Sessions Judge has failed to exercise that jurisdiction, I would be perfectly justified in observing that it is the duty of this Court while exercising its powers under Article 227 of the Constitution to see that the Court of Session and the Tribunals function properly and justly within the bounds of their jurisdiction. If the Sessions Judge has failed to exercise the jurisdiction conferred on him by the statutory provisions of the Code of Criminal Procedure (New), it would be the duty of this Court to interfere with the impugned order passed by the learned Sessions Judge.

14. Having carefully considered the submissions of Mr. Thakore, I must frankly say that there is no substance or merit in the same. As observed above, this is a gross case where the opponent Police Officer misused the colour of his office, took assistance of his subordinates, and snatched away currency notes from the victims by the use of force. In view of these eloquent facts, the discretion exercised by the learned Magistrate in releasing the opponent P.S.I. on bail was patently and grievously erroneous.

15. As a result of the aforesaid discussion the petition filed by the State is allowed and I direct that the opponent P.S.I. who is released on bail should be arrested and he be committed to custody forthwith. Rule made absolute, and the petition is allowed.