

Gujarat High Court

Dhimant Hasmukhbhai Hojiwala vs State Of Gujarat on 11 July, 2023

Bench: Hemant M. Prachchhak

R/CR.MA/16914/2019

ORDER DATED: 11/07/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
R/CRIMINAL MISC.APPLICATION NO. 16914 of 2019

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DHIMANT HASMUKHBHAI HOJIWALA

Versus

STATE OF GUJARAT

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Appearance:

MR AMIT V THAKKAR WITH MR NIRAD D BUCH(4000) for the Applicant(s)  
No. 1

MR TIRTHRAJ PANDYA APP for the Respondent(s) No. 1

UNSERVED WANT OF TIM for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

Date : 11/07/2023

ORAL ORDER

1. This application is preferred under Section 439(2) of the Code of Criminal Procedure, 1973 by the applicant - original complainant for cancellation of bail granted to the respondent herein - original accused by the learned 2nd Additional Sessions Judge, Surat vide order dated 1.3.2012 passed in Criminal Misc. Application No.270 of 2012 for the offence punishable under Sections 420, 465, 467, 468, 471, 120(B) and 114 etc. of the Indian Penal Code in connection with the FIR being C.R. No. 1 of 2012 registered before the D.C.B. Police Station.
2. Heard Mr.Amit V. Thakkar, learned advocate with Mr. Nirad D. Buch, learned advocate for the applicant- original complainant and Mr.Tirthraj Pandya, learned Additional Public Prosecutor for the respondent - State of Gujarat
3. Mr.Amit V. Thakkar, learned advocate applicant has R/CR.MA/16914/2019 ORDER DATED: 11/07/2023 submitted that after granting regular bail, the respondent accused has committed breach of conditions imposed by this Court and Trial Court and even he did not remain present before the concerned Police Station as well as before the Trial Court. He has submitted that the Trial Court has issued non-bailable warrant against the accused and because of non-availability, the trial could not commence. He has urged before the Court that the application may be allowed and the bail granted to the respondent accused may be cancelled.
4. Learned APP for the State of Gujarat is not controverted the aforesaid submission of learned advocate for the applicant.

5. I have perused the FIR and the impugned order passed by the Trial Court as well as the order passed by the Coordinate Bench of this Court. I have considered the submissions canvassed by learned advocates appearing on behalf of both the sides and the averments made in the application.

6. The notice was issued by co-ordinate bench of this Court on 6.9.2012 was not served upon the respondent accused. It appears from the record that against the order of the Trial Court, the accused has preferred Criminal Misc. Application No.6783 of 2018 before this Court for suspension of the condition Nos. 4 and 6 R/CR.MA/16914/2019 ORDER DATED: 11/07/2023 imposed by the Trial Court. The said condition imposed by the Trial Court read as under:-

"(4) Surrender passport, if any to lower Court within a period of 15 days, if the applicant does not have passport, he shall file an affidavit within 15 days before the lower Court (6) not leave India without the prior permission of Court concerned."

7. The co-ordinate bench of this Court vide order dated 4.4.2018 passed in Criminal Misc. Application No. 6783 of 2018 has suspended the said two conditions for a period of four months only on following conditions:-

"[i] the applicant shall deposit an amount of Rs.1,00,000/ (Rupees One Lakh only) before the concerned Trial Court and upon deposit of of the amount, the Trial Court shall handover passport to the applicant.

[ii] the concerned Trial Court shall deposit the amount of Rs.1,00,000/ in FDR in any Nationalized Bank for a period of four months.

[iii] before leaving the country, the applicant shall declare his itinerary to the concerned police station as well as trial Court along with full address of his stay in abroad and the schedule of his return.

[iv] the applicant shall deposit the passport within a period of one week after returning from the abroad.

[v] On returning the passport, learned Trial Court shall release the amount of Rs.1,00,000/ along with interest accrued thereon to the applicant by Account Payee Cheque, after proper verification"

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8. It seems that after this order was passed the accused never approached the Court nor returned in India from abroad. The accused has committed breach of the order passed by this Court and the order passed by the Trial Court.

9. It was pointed out by the learned APP for the applicant before this Court that the respondent accused has never remained present before the Trial Court during the trial and has committed

breach of conditions imposed by the Court. It seems that after releasing him on bail, the respondent accused has not co-operated with the investigation and also not personally present before the Trial Court. After enlarging the accused on bail, he has never complied with such conditions imposed by this Court and present before the Trial Court and because of non-availability of him, the trial could not commence.

10. It appears that the accused, after releasing on regular bail, has neither remained present before the concerned Trial Court on any of the occasions nor has marked his presence before the concerned Police Station. Therefore, this is a fit case to cancel the bail granted in favour of the respondent - accused for non-compliance of the order passed by this Court and Trial Court. It is relevant to note here that because of non-availability of the accused, the trial could not commence, which is pending before the Trial Court. It is desirable that only R/CR.MA/16914/2019 ORDER DATED: 11/07/2023 after securing the presence of the accused the trial can be concluded.

11. In view of the settled legal principle and the principle enunciated by the Hon'ble Apex Court and this Court, if the commitment made before the Court for compliance of the condition or for compliance of any promise is violated by the person then the liberty granted in favour of such person is to be curtailed and benefits under the provision of Section 439 to enlarge the applicant is to be cancelled. In present case, the flagrant violation of breach of the condition is reported, as the accused did not return to India to attend the trial.

12. No alteration or any change was permitted by this Court or the Trial Court subsequent to the order passed by this Court.

13. The ratio laid down by the Apex Court in the catena of decisions that if the accused is not co-operating with the investigating agency or not remaining present and flouting the conditions imposed upon him while granting bail, then in that case, he is not entitled for any leniency and in that circumstances, the bail is required to be cancelled. The reported decisions of the Hon'ble Apex Court in this regard are summarized as under :

[1] CBI versus Santosh Karnani and Anr., reported in 2023 SCC OnLine SC 427;

R/CR.MA/16914/2019 ORDER DATED: 11/07/2023 [2] Deepak Yadav versus State of UP and Anr., reported in [2022] 8 SCC 559;

[3] Kamla Devi versus State of Rajasthan and Anr., reported in [2022] 6 SCC 725;

[4] Manoj Kumar Khokhar versus State of Rajasthan and Anr., reported in [2022] 3 SCC 501; [5] Brijmani Devi versus Pappu Kumar and Anr., reported in [2022] 4 SCC 497;

[6] Supreme Bhiwandi Wada Manor Infrastructure Pvt. Ltd versus State of Maharashtra and Anr., reported in [2021] 8 SCC 753;

[7] Nathu Singh versus State of UP and Ors., reported in [2021] 6 SCC 64;

[8] Jitendra Taneja versus State of UP and ors., reported in [2021] 5 SCC 308; and

[9] Union of India versus K.A. Najeeb, reported in [2021] 3 SCC 713.

14. It is worthwhile to refer to the decision of this Court in the case of Jayshreeba Anirruddhsinh Gohil Vs. State of Gujarat reported in 2022 (4) GLR 2787 wherein this Court has held and observed in paragraphs no.8 and 11 as under:-

8. .... If such an approach is permitted then every accused will get himself released on bail by making false statements and his subsequent conduct from resiling from such statement will be a blessing for him. There will be no sanctity attached to the proceedings of the Court, and the accused will be roaming freely without complying with the directions. Non-fulfillment of the commitment or withdrawal from the statement cannot dilute the R/CR.MA/16914/2019 ORDER DATED: 11/07/2023 directions issued by a Court of law.

11. Under the circumstances and in light of the aforesaid glaring facts, this Court has no other option but to cancel the bail granted to the respondent No.2-Original accused No.1 vide order dated 24.05.2021 in Criminal Misc. Application No.3410 of 2021 passed by the City Sessions Judge, Ahmedabad. The impugned order dated 08.09.2021 passed in Criminal Misc. Application No.5749 of 2021 is hereby quashed and set aside.

The bail bonds are canceled. The respondent No.2- accused is directed to surrender immediately."

15. It is also worthwhile to refer to the decision of this Court in the case of Merubhai Ramabhai Kodyatar (Hun) Rabari Vs. State of Gujarat reported in 2021 (2) GLR 1175 wherein this Court has held and observed in paragraph no.11 as under:-

"11. The condition of marking presence before the police station for a certain period, is a condition which a court may impose in the interest of justice. Such conditions are generally imposed to secure the presence of the accused for the trial and to prevent him from fleeing the course of justice and such condition becomes necessary so as to prevent him from tampering with evidence or to prevent him from inducing or intimidating the witnesses so as to dissuade them from disclosing the facts before the police or court; and sometimes to restraint the movement of the accused in a particular area or locality or to maintain law and order. There may be further consideration in the mind of the court while imposing the condition of marking presence before the concerned police station; generally, this condition bears importance till the filing of charge- sheet, as and when the charge-sheet is forwarded to the Magisterial Court empowered to take cognizance of the offence on the police report, the same accused is under the control of the court."

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16. Considering the seriousness of the crime and keeping in mind the criminal antecedents of the accused, the possibility of tampering with the evidence cannot be ruled out which eventually would have a material bearing on the quality of justice. In view of aforesaid facts, request of cancellation of bail granted to the accused is acceded to.

17. For the foregoing reasons and in view of the decisions of the Apex Court as aforesaid, I am of the opinion that the present application deserves to be allowed and it is hereby allowed. The impugned order dated 1.3.2012 passed in Criminal Misc. Application No.270 of 2012 is hereby quashed and set aside. The regular bail granted to the accused stands cancelled. In view of the fact that the non-bailable warrant issued by the trial Court was not served upon the accused, the Investigating Officer is at liberty to take appropriate action under the statute in accordance with law, for execution of the warrant issued by the Trial Court for securing the presence of the accused.

Rule is made absolute.

(HEMANT M. PRACHCHAK,J) SURESH SOLANKI