

Gujarat High Court

State Of Gujarat vs Kantilal Narshibhai Bhimani on 23 June, 2023

Bench: Hemant M. Prachchhak

R/CR.MA/1239/2019

ORDER DATED: 23/06/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 1239 of 2019

STATE OF GUJARAT  
Versus  
KANTILAL NARSHIBHAI BHIMANI

Appearance:

MS MAITHILI MEHTA APP for the Applicant(s) No. 1

MR VH KANARA(1881) for the Respondent(s) No. 1

MR. NIKUNJ KANARA(7301) for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE HEMANT M.  
PRACHCHHAK

Date : 23/06/2023

ORAL ORDER

1. This application is preferred under Section 439(2) of the Code of Criminal Procedure by the State of Gujarat for cancellation of bail granted to the original accused by the learned Additional Sessions Judge and Special Judge, Jamnagar vide order dated 29.9.2018 passed in Criminal Misc. Application No. 1576 of 2018 for the offence punishable under Sections 7, 13(2) etc. of the Prevention of Corruption Act in connection with the offence registered vide I.C.R. No. 4 of 2018 before A.C.B. Police Station, Jamnagar.

2. Heard learned Counsels appearing for the respective parties.

3. Learned APP for the applicant submitted that the R/CR.MA/1239/2019 ORDER DATED: 23/06/2023 impugned order is ex facie illegal and arbitrary and that the same is passed without appreciating the facts and circumstances of the case. She therefore, urges before the Court that the application may be allowed and the bail granted to the accused persons may be cancelled.

4. On the other hand learned Counsel for the respondent accused has strongly objected the submissions made by learned APP for the applicant and submitted that the trial Court has after evaluating the evidence placed on record and after taking into account all the relevant aspect passed the impugned order of bail and therefore, he urges this Court to dismiss the present application.

5. I have perused the impugned order passed by the Trial Court granting bail to the applicant. I have considered the submissions canvassed by learned advocates appearing on behalf of both the sides and the averments made in the application. Further, from the record it appears that after long span of time i.e. from 2018 there is no overwhelming circumstance is reported against the accused and there is no any breach of the conditions by the accused. Further, it is relevant to note that though there is no any prohibitory order, investigating officer has not filed chargesheet on the ground that FSL report was received in 2022 only. However, even thereafter, also the investigating officer has not filed chargesheet before the concerned Court and therefore, trial could not be proceeded further. Considering R/CR.MA/1239/2019 ORDER DATED: 23/06/2023 the said aspect, I am of the opinion that the Trial Court has rightly exercised its power under Section 438 of the Code.

6. It must be emphasised at the outset that there is a vivid distinction between the parameters to be applied while considering a bail application, vis a vis those applicable while deciding a petition for its cancellation. In *Puran vs. Rambilas* reported in (2001) 6 SCC 338, it was reiterated that at the time of deciding an application for bail, it would be necessary to record reasons, albeit without evaluating the evidence on merits. In turn, *Puran (supra)* cited *Gurcharan Singh v. State (Delhi Admn.)* reported in (1978) 1 SCC 118 wherein this Court observed that bail once granted by the trial Court, could be cancelled by the same Court only in case of new circumstances/evidence, failing which, it would be necessary to approach the Higher Court exercising appellate jurisdiction.

7. At this stage it is appropriate to take in to account the observations made by the Hon'ble Apex Court in case of *Deepak Yadav vs. State of Uttar Pradesh* and another reported in (2022) 8 SCC 559. The said observations read as under:-

"Head Note C. Criminal Procedure Code, 1973, -Ss. 439 and 437 - Bail - Cancellation of - Grounds for - Principles summarised.

"30. This Court has reiterated in several instances that 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 trial. Having said that, in case R/CR.MA/1239/2019 ORDER DATED: 23/06/2023 of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted). A two-Judge Bench of this Court in *Dolat Ram And Others Vs. State of Haryana* 17 laid down the grounds for cancellation of bail which are :-

- (i) interference or attempt to interfere with the due course of administration of Justice
- (ii) evasion or attempt to evade the due course of justice
- (iii) abuse of the concession granted to the accused in any manner

(iv) Possibility of accused absconding

(v) Likelihood of/actual misuse of bail

(vi) Likelihood of the accused tampering with the evidence or threatening witnesses."

7.1 In the decision of this Court in case of Hiteshkumar Vallabhdas Shah Power of Attorney of Pankaj Indravadan Sheth Vs. State of Gujarat reported in 2021 GLR 4 2874, this Court has held as under:-

"7. In case of Anil Kumar Yadav Vs. State of NCT Delhi (supra), the Hon'ble Supreme Court observed in paragraph no.32 that, once discretion is exercised by the Sessions Court to grant bail on consideration of relevant materials, the High Court would not normally interfere with such discretion, unless the same suffers from serious infirmities or perversity. While considering the correctness of the order granting bail, the approach should be whether the order granting bail to the accused is vitiated by any serious infirmity, in which case, the High Court can certainly interfere with the exercise of discretion.

7.1. Dolat Ram Vs. State of Haryana, reported in 1995 SCC(1) 349 relied upon by the learned advocate for the respondent no.2, is a case where anticipatory bail was sought to be cancelled wherein, the Hon'ble Supreme Court in para- 4, held as under: "Rejection of 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.

R/CR.MA/1239/2019 ORDER DATED: 23/06/2023 Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) 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 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.

These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted."

7.2. The Hon'ble Supreme Court in case of Narendra Amin Vs. State of Gujarat, reported in 2008 (13) SCC 584, noted that the Court dealing with cancellation application is required to find whether irrelevant material of substantial nature was taken into account or relevant material omitted from consideration while granting bail. If so, order granting bail would be perverse, justifying cancellation, in that context, stand of no supervening circumstances has no relevance in such a case.

7.3. The Hon'ble Supreme Court in case of Abdul Basit Alias Raju And Ors. Vs. Mohd. Abdul Kadir Chaudhary And Another, reported in (2014) 10 Supreme Court Cases 754, held that although the court granting bail can cancel the bail on ground of accused's misconduct or new adverse facts having surfaced after the grant of bail, however, in view of express bar contained in Section 362 Cr.P.C., it cannot review its order as to grant of bail on ground of it being unjustified, illegal or perverse. Such challenge to bail order on ground of it being illegal or contrary to law can be determined only by the court superior to the court which granted bail. The cancellation of bail rides on the satisfaction and discretion of the court under Section 439(2) of the Cr.P.C., it does not vest the power of review in the court which granted bail.

7.3.1. In Dolat Ram's case (supra), it has been held that very R/CR.MA/1239/2019 ORDER DATED: 23/06/2023 cogent and overwhelming circumstances are necessary for the canceling bail granted to an accused. As has been held in Narendra Amin's case (supra), the Court is required to examine whether irrelevant material of substantial nature has been taken into account or relevant material has been omitted from consideration while granting bail. In Abdul Basit @ Raju And Ors. (supra), the cancellation of bail was sought for on the grounds that it was obtained by gross misrepresentation of facts, misleading the Court and indulging in fraud, requiring the bail order to be set aside on ground of it being perverse in law. It was observed that circumstances brought on record do not indicate any situation where bail was misused by accused, thus was held that cancellation of bail can be granted on ground of accused's misconduct or new adverse facts having surfaced after the grant of bail; and challenge to bail order on ground of it being illegal or contrary to law, can be determined only by the Court superior to the Court which granted bail.

7.4. It has been held by the Hon'ble Supreme Court in case of Bhagirath Singh S/o. Mahipat Singh Judeja Vs. State of Gujarat; reported in AIR 1984 SC 372, that, even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence.

7.5. Myakala Dharmarajam & Ors. Etc. Vs. The State of Gujarat, decided on 07.01.2020 in Criminal Appeal Nos.1974- 1975 of 2019, the Hon'ble Apex Court while placing reliance on the case of Kanwar Singh Meena Vs. State of Rajasthan & Anr., reported in (2012) 12 SCC 180, held that, the factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The court has to only opine as to

whether there is prima facie case against the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the R/CR.MA/1239/2019 ORDER DATED: 23/06/2023 police and comment on the same.

7.6. In case of Raghbir Singh Vs. State of Bihar, reported in (1986) 4 SCC 481, the Hon'ble Apex 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, (viii) 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.

7.7. Cancellation of bail could not be resorted to on the assumption that the applicant - accused was guilty. In Sushila Aggarwal Vs. State of (NCT of Delhi), reported in (2020) 5 SCC 1, it is held that, the correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the State of investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. This does not amount to "cancellation" in terms of Section 439 (2) Cr.P.C. So when the order of bail is found to be erroneous, as material facts and crucial circumstances are ignored, it would be vulnerable subjecting to be set aside."

12. In case of Sanjay Chandra Vs. CBI, reported in (2012) (1) SCC 40, the Hon'ble Apex Court held that, primary purpose of bail in a Criminal Case is to relieve the accused of imprisonment, to relieve the State of the burden of keeping the accused pending trial and at the same time to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court at the time of trial. Merely the offence alleged against the accused is serious one, in terms of huge loss to the State exchequer that itself should not deter the Court from enlarging on bail when there are no serious contentions from the prosecution that if the accused is released on bail, they would interfere with the trial or tamper with the evidence."

R/CR.MA/1239/2019 ORDER DATED: 23/06/2023 7.2 In the decision of this Court in case of Asha Dharamnarayan Sharma Vs. State of Gujarat dated 12.2.2016 passed in Criminal Misc. Application No.20335 of 2015, this Court has held as under:-

"12. In view of the aforesaid facts and circumstances of the case, once the discretion is exercised by this Court while releasing the applicant on bail, liberty of the respondent - accused cannot be taken away and interference with the order of granting bail is very harsh order and in absence of cogent and relevant material, it is not proper for this Court to exercise the powers under Section 439(2) of the Code by cancelling the bail granted in favour of the respondent - accused. I am also in complete agreement with the reasoning given by the learned Sessions Court while dismissing the application filed by the applicant - original complainant."

8. Considering the ratio laid down by the Hon'ble Apex Court, this Court is of the view that so far as the factum of considering the application filed under section 439 (2) of Code for cancellation of bail and granting of bail are concerned, both factors are quite different. Normally in usual circumstance, the Court cannot interfere with the order passed by the Trial Court except in the case of any overwhelming circumstance or any breach of condition or any other special circumstance shown by the applicant.

9. In view of the aforesaid facts and circumstances of the case and the case laws and in view of the decision of this Court in case of State of Gujarat vs. Mahavirsinh Nirubha Jadeja dated 14.6.2023 passed in Criminal Misc. Application No. 1430 of 2020, I am of the opinion R/CR.MA/1239/2019 ORDER DATED: 23/06/2023 that in the present case, when the respondent original accused person has been released on bail and has not committed any breach of conditions imposed by the Court and when there is no overwhelming circumstances, there is no reason to exercise power under Section 439(2) of the Code and cancel the bail granted in favour of the respondent - original accused.

10. With aforesaid clarifications and observations, present application deserves to be dismissed and accordingly it is dismissed. Notice discharged.

(HEMANT M. PRACHCHHAK,J) SURESH SOLANKI