

2023 SCC OnLine Guj 2763

In the High Court of Gujarat at Ahmedabad
(BEFORE SAMIR J. DAVE, J.)

Diptiben Dhanjibhai Patel

Versus

State of Gujarat

R/Special Criminal Application No. 10935 of 2023

Decided on September 1, 2023

Advocates who appeared in this case:

Mr. Hitesh P. Prajapati(12819) for the Applicant(s) No. 1

Mr. Kishan Prajapati(7074) for the Applicant(s) No. 1
for the Respondent(s) No. 2

Mr. Bhargav Pandya, App for the Respondent(s) No. 1

The Order of the Court was delivered by

SAMIR J. DAVE, J.:— Rule returnable forthwith. Learned APP waives service of notice of Rule for and on behalf of the respondent No. 1-State.

2. By preferring this application, applicant has requested to quash and set aside the order dated 28.03.2023 passed by learned Presiding Officer, Special Court, (N.I. Act) Ahmedabad (Rural) in Criminal Case No. 404 of 2015, so that the applicant can prefer an appeal before the learned appellate court.

3. Heard learned advocates for the respective parties.

4. It was submitted by learned advocate for the applicant that the applicant was convicted for the offence punishable under Section 138 of the NI Act vide order dated 28.03.2023 in Criminal Case No. 404 of 2015 but on the date of pronouncement of the judgment and order of the conviction, the applicant being the accused person was not present and as he did not remain present during the pronouncement of judgment and no application was filed for suspension of substantive order of the sentence under Section 389 of CrPC, learned court has issued non bailable warrant that is how the applicant has approached this court by way of present application.

5. It was submitted by learned advocate for the applicant that applicant is ready and willing to deposit Rs. 100000/- (One lac) before the concerned trial court within a period of 2 weeks from today and ultimately, it was submitted by learned advocate for the applicant to allow present application.

6. On the other side, learned APP for the respondent no. 1 State has

strongly objected the submissions made by learned advocate for the applicant and requested to reject present application of the applicant.

7. Having heard learned advocate for the applicant and learned APP for the respondent no. 1-State, it appears that the applicant has been convicted and on the date of conviction, he was not present before the court and thereafter, non bailable warrant has been issued against him and as against that order, he has approached this court.

8. It is required to be noted that the issue involved in this petition is no more res-integra and squarely covered by the decision of the Coordinate Bench of this Court rendered in Special Criminal Application (Quashing) No. 9112 of 2016, decided on 22.2.2017, as referred to above, in somewhat similar set of facts. The Coordinate Bench of this Court has, after considering the decision rendered by the Division Bench in the case of *Sharad Jethalal Savla v. State of Gujarat* [Criminal Misc. Application No. 19862 of 2015, decided on 14.11.2016] held as under:

"7. I am inclined to give one opportunity to the applicants herein to appear before the learned 4th Additional Chief Judicial Magistrate, Vadodara in person with their advocates. On the day and date the applicants herein appear before the learned Magistrate, it will be open for them to file an application under Section 389(3) of the Cr. P.C. for provisional bail to enable them to prefer a criminal appeal before the Sessions Court against the conviction and sentence. The criminal appeal before the Sessions Court could have been registered only after an appropriate order under Section 389(3) of the Cr. P.C. was passed by the trial Court.

8. In any view of the matter, the non-bailable warrant is converted into a bailable warrant of the sum of Rs. 10,000/- (Rupees Ten Thousand only). The applicants are directed to appear before the Court concerned within a period of one week from today and shall furnish a bail of Rs. 10,000/- each. If any such application is filed under Section 389(3) of the Cr. P.C., the Court concerned shall pass appropriate orders in accordance with law."

9. In view of the aforesaid, this Court is inclined to pass following directions:

(1) As per statement made by the learned advocate for the applicant, applicant shall deposit Rs. 100000/- (One lac) before the concerned trial court within a period of two weeks from today and the applicant shall approach the learned Trial Court concerned in person with his Advocate for cancellation of non bailable warrant issued by the learned Magistrate and learned Magistrate will decide such request in accordance with law.

(2) It will be open for him on the day and date he appears before the concerned Trial Court to file an application under Section 389(3)

of the Cr. P.C. for provisional bail.

(3) If any such application is filed under Section 389(3) of the Cr. P.C., the Court concerned shall pass appropriate orders in accordance with law.

(4) The applicant shall file an undertaking before the court concerned to the effect that he will cooperate in the proceedings and non-adherence of undertaking will follow the consequences.

10. With the above, present petition stands disposed of. Rule is made absolute to the aforesaid extent. Direct service is permitted.

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