IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 165 of 1996
with
CRIMINAL MISC. APPLICATION NO.2102 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

VIRBHADRASINH GOVUBHA GOHIL

Appearance:

Mr S.R. Divetia, APP, for Petitioner

Mr B.M. Mangukia, advocate for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/05/96

ORAL JUDGEMENT

A criminal complaint was lodged against the accused, Virbhadrasinh Gohil and Raymal Chhotabhai Rathod, respondents herein, for the offences punishable

under sections 7, 12, 13 and 13 (2) of the Prevention of Corruption Act and under section 201 of the Indian Penal Code on 26th April 1996. It is stated in the complaint that when a trap was caried out, respondents-accused saw the raiding party from a distance and they ran away with the bribe amount of Rs.50/- taken from one Mr Yogeshbhai Bhagavatiprasad Vyas. The police officer could arrest the accused persons only after a period of 58 hours and a remand application was given by the investigating officer in the Court of the learned Special Judge concerned on 29th April 1996. The remand was prayed for on the ground that muddamal of Rs.50 is yet to be recovered from the accused. Another ground that has been given is that panchnama is also yet to be prepared for getting the amount from the accused pursuant to Section 27 of the Evidence Act. The third ground is that accused-respondents remained absent for about 58 hours and therefore it is very essential to know as to where were they during that period and lastly it is stated that both the respondents were arrested on 29.4.1996 at about 6.00 hours and there were some injuries on the bodies and their uniform was also torn and therefore it is very essential for the investigating officer to know as to under what circumstances they received injuries. The learned Special Judge, Bhavnagar, dismissed the application of the investigating officer on the ground that there is no possibility to get the muddamal property i.e. Rs.50 (bribe amount) from the accused and as such no remand can be given. This order was passed on the same day and is challenged by the petitioner in Criminal Revision Application No.165 of 1996. On 3rd May 1996 this criminal revision application has come up for admition and this Court issued notices to the respondents and also notice as to interim relief returnable on 16th May 1996.

2 The learned Special Judge, Bhavnagar, granted bail to the accused-Virabhadrasinh Govubha Gohil while allowing the Criminal Misc. Application No.320 of 1996 vide his order dated 4th May 1996 against which Criminal Misc. Application No.2102 of 1996 is filed by the petitioner-State before this Court for the cancellation of the bail granted to the accused person.

3 I have taken both the matters as they have arisen out of the same complaint. The learned counsel for the State, Shri S.R. Divetia, has contended that the learned Special Judge has committed illegality in releasing the accused-Virbhadrasinh Gohil on bail when the Criminal Revision Application No.165 of 1996 is pending before this Court. In Criminal Revision Application No.165 of

1996 notice was issued by this Court on 3rd May 1996. When the matter regarding granting of remand of the accused was pending before this Court, the Special Judge should not have enlarged the accused on bail. It has

next been contended that the learned Judge has failed to appreciate that the currency note of Rs.50 was accepted by the accused Virabhadrasingh and was given to another accused Remal Rathod and the bail should not have been granted in case the muddamal property is not recovered. It has next been contended that the learned Special Judge has committed an error in observing that the currency note has been taken away by another accused - Rathod.

4 I have given my thoughtful consideration to the submissions made by Shri Divetia. This is an application for cancellation of the bail under section 439 of the Criminal Procedure Code, 1973. Sub section 2 of section 439 of the Criminal Procedure Code, 1973, makes a provision for cancellation of bail and for the order of arrest of the person and commit him to the custody by this Court or the Court of session.

5 It is stated that this Court has power under section 439(2) of the Criminal Procedure Code for cancellation of the bail granted by the learend Sessions Judge but the power to take back in custody an accused who has been enlarged on bail has to be exercised with great care and circumspection. It is further correct to say that this power, though of an extraordinary nature, is meant to be exercised in appropriate cases where by a preponderance of probabilities it is clear that the accused is interfering with the course of justice by tampering with the witnesses. The power to cancel the bail granted to the accused though vests in this Court under sub section 2 of Section 439 of the Criminal Procedure Code, 1973, after the amendment, but whether on the basis of the alleged allegations made in this Criminal Misc. Application, the bail granted to the accused can be cancelled is a question needs to be considered. Leaving apart the question of proving the allegation beyond reasonable doubt or the proof of facts by preponderance of probabilities a larger question does arise whether on the basis of the allegations made the bail granted to the accused can be cancelled. So far as the first ground that the Sessions Judge could not have enlarged accused on bail when Criminal Revision Application No.165 of 1996 is pending before this Court against the order of Court below not extending the remand period, it is suffice to say that it is of no substance. To grant the remand and to consider the application of

the accused for enlarging them on bail are two different things. The remand period has not been extended and that action may be challenged by the State Government before this Court but, the challenge to the action in the criminal revision application will not preclude the Sessions Court to consider the application of the accused under section 439 of the Criminal Procedure Code, 1973, to enlarge him on bail. In case the proper case is made out, I fail to see how it is not open to the Sessions Court not to enlarge the accused on the bail. Much emphasis has been laid upon the question that without remand it is difficult to recover the currency note of Rs.50/- which is the amount of bribe accepted by the accused but, I fail to see how this ground is sufficient to cancel the bail of the accused granted by the Sessions Court to him. Even if the accused is enlarged on bail, he has to make himself available for interrogation to the investigation or police officer in charge of the investigation as the case may be. When the accused is available for interrogation, he can be interrogated for investigation purposes which include recovery of the muddamal amount. However, on this ground the bail cannot be cancelled. There is no bar that the investigation officer or the police officer concerned has no power to proceed with the investigation without remand and without keeping the accused in police custody which includes power to make necessary recoveries at the instance of the accused. The learned counsel for the State has unable to cite any authority in support of his contention that unless the muddamal money is recovered from the accused, the learned Sessions Judge should not have enlarged the accused on bail. Normally, there are certain judicially accepted principles on which a bail granted to the accused can be cancelled. It is true that these are not exhaustive principles. A reference in this respect may be made to the decision of the Supreme Court in the case of Gurucharan Singh v. State (Delhi Administration) reported in AIR 1978 SC 179. The accepted principle on which normally the Courts cancel the bail is that where the accused is interfering with the course of justice by tampering with the witnesses. It is not that case here. But really the case of the State is as if it is challenging ther order of the Sessions Court granting the bail. This Court will not sit on the order of the Sessions Judge as appellate Court. It has no concern whether the accused should be released on bail or not. Once the discretion has been exercised by the Sessions Judge, unless special circumstances are brought on record, no cancellation should be ordered. The circustances which have been brought on record are not sufficient to cancel the bail of the accused. It is a

case where the prosecution feels that in case the accused is not given in police custody, they will not be able to recover the currency note or they will not be able to get more information. On this ground it is difficult to cancel the bail.

In the result, Criminal Misc. Application No.2102 of 1996 is dismissed.

So far as the Criminal Revision Application No.165 of 1996 is concerned, it no more survives against opponent no.1 who has been enlarged on bail by the Sessions Court below. When the main accused has been enlarged on bail, I fail to see how any justification would be there in the claim of the State to seek extension of the remand. Considering all these circumstances, I am satisfied that no illegality has been committed by the Court below in passing the impugned order. The revision application is therefore dismissed. Notice discharged.

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