

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3013 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DEVANG SHANTILAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR VIJAY H PATEL for Petitioner

MR BD DESAI, A.P.P., with Mr.M.R.ANAND, PP. for the
Respondent No.1.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 31/07/96

ORAL JUDGEMENT

Leave to delete Respondent No.2.

Rule. Service of Rule waived by Mr.B.D.Desai,
learned A.P.P. with Mr.M.R.Anand, learned P.P. on behalf
of Respondent - State. By consent this matter is taken up
for final disposal.

2. The petitioner and other accused face the

Criminal Case No.2804 of 1988 before the learned J.M.F.C., at Cambay (Khambhat) and the said case is pending for service of process. In the first instance summons was issued and thereafter on the application Ex.43, moved by the complainant Union Bank of India for serving the summons by publication, order dated 12.7.1993 was passed and bailable warrant was issued against the present petitioner and other accused, all being accused Nos.3 to 8. The grievance of the petitioner is that he came to know that without any judicial order, by some mistake bailable warrants were converted into Non-Bailable Warrant on 13.3.1994. Therefore, the petitioner moved Criminal Revision Application No.5 of 1996 before the learned Sessions Judge, District Kheda at Nadiad and the learned Sessions Judge, on going through the record, dismissed the said Revision Application on the ground that the order complained of was interlocutory in nature. It is this decision dated 9.4.1996 which has been brought under challenge in this petition under Article 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973 (2 of 1974).

3. On going through the impugned order passed by the learned Sessions Judge it clearly appears that the learned Sessions Judge has not made any reference to any order of converting the bailable warrant into Non-Bailable Warrant even though the learned Sessions Judge had before him the record and proceeding. That is how the grievance of the petitioner has remained un-attended to. Ordinarily, this matter could have been sent back to the learned Sessions Judge both, for finding out whether there is any such order passed by the learned Magistrate and/or to inquire into the matter on administrative side. However, criminal case before the learned Magistrate is of 1988 and even in 1996 the processes have not been served. Bearing in mind this situation, this Court called upon the petitioner through his learned Advocate to say whether he would appear before the learned Magistrate on the date fixed by this Court. Mr.V.H.Patel, learned Advocate for the petitioner submits that his client would appear before the learned Magistrate on 23.8.1996. He has also submitted that his client would make efforts to see that other accused persons, against whom the bailable warrant has been issued as per order noted hereinabove, appear before the learned Magistrate. It is made clear to the petitioner as also the other accused persons against whom the bailable warrant have been ordered to be issued by the learned Magistrate that in default of appearance on the part of the petitioner as directed by the learned

Magistrate there will certainly be a chance of issuance of Non-Bailable Warrant against the defaulting accused. Mr.B.D.Desai, learned A.P.P. fairly submitted that appropriate order of issuance of bailable warrant to the accused Nos.3 to 8 might be passed instead of order of non-bailable warrant as displayed by the Rojkam. Following directions are, therefore, issued :

The order of bailable warrant passed by the learned Magistrate below Ex.43 is restored. It is made clear that the petitioner is to appear before the learned Magistrate on 23.8.1996 in compliance of this order and furnish the bail to the trial Court for his appearance in the case from time to time as fixed by the learned Magistrate. It will be open for him to pray for exemption as and when it is not possible for him to appear. The learned Magistrate will see to the service of the bailable warrant to the rest of the accused as described in Application Ex.43 in case the rest of the accused do not appear before the learned Magistrate on 23.8.1996. The proceedings of the criminal Case shall now be expeditiously dealt with by the learned Magistrate. Rule made absolute in the aforesaid terms.

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