

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 144 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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ASHOK KHIMBJI SAYANI

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Revision Application No. 144 of 2002

MR PN BAVISHI for Petitioner No. 1-2

MR DESAI, APP, for Respondent No. 1

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 30/09/2002

ORAL JUDGEMENT

1. This revision application is preferred to challenge an order passed by learned Judicial Magistrate, First Class, Veraval, below application dated 8.8.2001 by one Bhikha Punja posing as surety to the revisioners-Ashok Khimji Suyani and Jitendra Shashikant Kumbavat, who are accused persons in a prohibition case for offences punishable under Section 66B, 65(A)(e) and 116(2)(b). By that application, the applicant therein posed as surety of those accused persons, who were enlarged on bail by virtue of an order passed by the learned Judicial Magistrate, First Class, on the 24th July, 2001, on executing a bond of Rs.7000/- and on furnishing a solvent surety of Rs.7000/-. On that day, however, the solvent surety could not be furnished and, therefore, cash of Rs.7000/- for each of the accused was deposited by one Nilesh Premji Chavada and Shashikant Dayaram Kumbavat. The learned Magistrate, by the impugned order, rejected prayer for accepting Bhikha Punja as surety and refund of the amount deposited as

cash surety. Aggrieved by the said order, the present revision application is preferred by the accused-Ashok Khimji Suyani and Jitendra Shashikant Kumbavat.

2. Heard learned Advocate, Mr. Bavishi, for the revisioner and learned Additional Public Prosecutor, Mr. Desai, for the respondent-State. The record and proceeding is before this Court, which has also been perused.

3. It is amply clear that when an order for release of the accused persons-revisioners herein was passed on the 24th July, 2001, each of the accused persons was supposed to execute bond for Rs.7000/- and furnish solvent surety of Rs.7000/-. It is also clear that Nilesh Premji Chavada and Shashikant Dayaram Kumbavat posed as surety, but did not have solvency certificates and, as such, they expressed their readiness to deposit Rs.7000/- cash, as cash surety. The Court recorded those Purshis and accepted cash surety. On the 8th August, 2001, an altogether different person appeared before the Court, namely, Bhikha Punja, and passed a Purshis to the effect that he is ready to stand as surety for both the accused persons and he produced a solvency certificate for Rs.40,000/-. The learned Magistrate did not accept him as a surety, as cash surety was already accepted by the Court. The learned Magistrate also observed that the accused persons are already bailed out. The Purshis tendered earlier were only recorded and no prayer was granted earlier and, ultimately, deemed it proper not to accept Bhikha Punja as surety and rejected the application.

4. This revision application is preferred by the accused persons and they sought a prayer for quashing and setting aside the said order passed by the learned Judicial Magistrate, First Class, at Veraval. The reasons indicated are that cash was deposited only by way of a stop gap arrangement and when a surety with requisite solvency certificate is presented before the Court, it ought to have been accepted and cash amount should have been refunded. It may be noted that, it is for the Trial Court to decide whether to accept a surety or not. Secondly, when an accused is enlarged on bail on cash surety, acceptance of a solvent surety cannot be insisted upon. It is true that, in earlier application, the persons posing as surety had prayed for time for producing solvency certificate. However, in that very application, they expressed readiness to deposit Rs.7000/- each as cash surety and the Court has also said "recorded". The prayer for time was rejected. Even if

that was granted, the solvency certificate ought to have been produced by those applicants, namely, Nilesch Premji Chavada and Shashikant Dayaram Kumbavat. Under these circumstances, this Court finds no reason for any interference in the order. No illegality or impropriety is indicated. No miscarriage of justice is found and the revision must fail. The revision application stands dismissed. Rule is discharged.

[ A.L. DAVE, J. ]

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