

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 721 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 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? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

JARMOHMMAD J PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 721 of 2003
MR DM THAKKAR for Petitioner No. 1
MR SS PATEL APP for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 17/10/2003

ORAL JUDGEMENT

Rule. Mr.S S Patel learned APP appears and waives service of notice of Rule on behalf of State.

2. The petitioner - original accused in Jhalod Police Station C.R.No.I-38/2002 has preferred this petition under Article 226 of the Constitution of India read with s.439 of the Code of Criminal Procedure, 1973 (for short, "the Code") in order to challenge the judgment and order dated 11/07/03 passed by the learned Addl. Sessions Judge, Panchmahals at Dahod in Cr.R.A.No.43/2002 allowing the said revision application and setting aside the order dated 24/06/03 of the learned J.M.F.C., Jhalod and directing the petitioner to surrender within seven days.

3. It has been mainly contended here that the learned Addl. Sessions Judge had no jurisdiction to entertain the aforesaid revision application; that, the bail was granted properly to the petitioner and there was no need to cancel the bail already granted to the petitioner; that, therefore, the judgment and order of the learned Addl. Sessions Judge are illegal and perverse and deserve to be set aside. The petitioner has, therefore, prayed that the judgment and order recorded by the learned Addl. Sessions Judge, Panchmahals at Dahod be set aside.

4. On receipt of the revision application, Notice was issued at the first instance. I have heard the learned advocates for the parties and have perused the papers. Indisputably, the petitioner was arrested in connection with Jhalod Police Station C.R.No.I-38/2002. He was produced before the learned J.M.F.C., Jhalod. He submitted an application for bail. The learned Magistrate heard the parties and directed that the petitioner herein be enlarged on bail, in a sum of Rs.10,000/-, on conditions stated in the bail order dated 24/06/02.

5. The State of Gujarat, felt aggrieved by the said order and preferred Cr.R.A.No.43/2002 in order to challenge the said order of bail granted by the learned Magistrate. The learned Addl. Sessions Judge allowed the revision application and cancelled the bail granted to the petitioner. This order is in challenge in this revision application.

6. The learned advocate for the petitioner has taken a preliminary objection arguing that the learned Addl. Sessions Judge could not have entertained the revision application, since the revision application was filed by the State of Gujarat against a bail order, which was an interlocutory order and revision application would not be entertainable against an interlocutory order, in

accordance with the provisions made in subsection 2 of section 397 of the said Code.

7. In order to appreciate the said position, the provision contained in subsection 2 of section 397 of the Code is reproduced for ready reference as follows;

Section 397(2) : "Calling for records to exercise of powers of revision.- The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding".

6.1 On a bare reading of subsection 2 of section 397 of the Code, it is amply clear that the powers of revision conferred by subsection 1 of section 397 of the Code are not entertainable or exercisable in relation to any interlocutory order

8. In the present case, we find that the learned advocate for the petitioner has argued that an order granting bail is an interlocutory order and therefore, it cannot be revised by exercising powers of revision under section 397(2) of the Code. It would, therefore, be necessary for us to consider whether the order granting bail can be treated to be an interlocutory order.

9. In support of the judgment of the Sessions Court, the learned advocates have relied upon certain decisions;

(A) Ms.R Shakuntla V/s. Roshanlal Agarwal and Ors. reported in 1985 CLJ 68 has been shown in order to show that the order in question is not an interlocutory order. Some distinctions have been made, in order to point out as to whether a particular bail order can be treated to be an interlocutory order.

(B) Prashant Kumar V/s. Mancharlal Bhagatram Bhatia and Ors. reported in 1988 CLJ 1463 has also been shown in order to argue that an order granting bail is a final order and not an interlocutory order and therefore, a criminal revision application against such an order is maintainable and there is no bar u/s.397(2) for entertaining the same.

(C) K. K. Patel V/s. State of Gujarat reported in (2000) 6 SCC 195 was shown in order

to argue that a bail order is not an interlocutory order. However, the facts in the said case were quite different and therefore, the said decision will not apply to the facts of the case on hand.

(D) *Puran V/s. Rambilar and Anr.* reported

in (2001) 6 SCC 338 was also shown in order to argue that inherent jurisdiction under s.482 of the Code remains unaffected despite provisions of s.397(2) of the Code and therefore, the fact that the impugned order was an interlocutory order of the Court of Sessions was immaterial. Now, this decision will not be helpful to the State, since there it was observed that if there was a bar of s.397(2) of the Code against the exercise of revisional jurisdiction, then the Court could exercise powers u/s.482 of the Code. Now, the powers u/s.482 of the Code are exercisable by the High Court and therefore, the Sessions Court cannot exercise the same. The powers of revision u/s.397 of the Code exercised by the Sessions Court in the present case cannot be treated to be the powers exercised under s.482 of the said Code.

(E) In *Haji Abdulla Haji Ibrahim Mandhra V/s.*

Supdt. of Customs, Bhuj and Ors. reported in 1992(1) GLR 144, it has been observed that a Sessions Judge has no jurisdiction to revise the order passed by a Magistrate releasing an accused on bail in exercise of the powers under s.397 and 439 of the said Code. However, the Court in the said matter was not required to decide the applicability of s.397(2) of the said Code and therefore, the said decision will not come to the rescue of the State in the present matter.

(F) The case in *Amarnath V/s. State of*

Haryana reported in AIR 1977 SC 2185 (Also reported in 1977 CLJ 1891 SC) deals with the provisions made in subsection 2 of section 397 and s.482 of the said Code thereof. There, it has been held that when there is a bar of s.397(2) of the said Code, it would not be proper to resort to the provisions made in s.482 of the said Code.

(G) In the case of *Usman Memom V/s. State of*

Gujarat reported in AIR 1988 SC 922, the Hon'ble the Supreme Court has clearly observed that an

order granting or refusing bail, is an interlocutory order and not a final one and therefore, an appeal against such an order is not maintainable. Once it is found that the order is an interlocutory one, then revision against such an order, would stand barred under s.397(2) of the said Code.

(H) In Makwana Sambhubhai V/s. State of Gujarat reported in 1992 (2) GLR 1291 it has been clearly observed by the learned Single Judge of this Court that a bail order of a Sessions Court is an interlocutory one and hence, a criminal revision application would not be entertainable.

(I) The Hon'ble the Bombay High Court has also adopted a similar view in the case of State of Maharashtra V/s. Sanjay & Ors. reported in 1999 CLJ 3806.

(J) Even the Hon'ble the Madhya Pradesh High Court has taken similar view in the case of Ram Naresh V/s. State of M.P. reported in 1995 CLJ 2523.

10. In above view of the matter and looking to the stand taken by this Court as well as by the Hon'ble the Supreme Court and by other Hon'ble High Courts, it is very clear that an order granting or refusing to grant bail, is an interlocutory order and consequently, looking to the provisions made in subsection 2 of section 397 of the said Code, such an order would not be revisable and consequently, revision against such an order would not be maintainable. In other words, there is an express bar against entertaining a criminal revision application against an order granting or refusing to grant bail to an accused person.

11. We find in the case on hand that the learned J.M.F.C., Jhalod had granted bail to the petitioner by order dated 24/06/02 on certain conditions. A criminal revision application was filed by the State of Gujarat being Cr.Rev.Appl.No.43/2002 before the Sessions Court, Panchmahals at Dahod. The learned Addl. Sessions Judge allowed the said criminal revision application and cancelled the bail, in exercise of revisional jurisdiction u/s.397 of the said Code.

12. Looking to the above principle, it is very clear that the learned Addl. Sessions Judge, Panchmahals at Dahod could not have entertained the said revision

application, in view of the specific bar u/s.397(2) of the said Code. In other words, the judgment and order of the learned Addl. Sessions Judge impugned in this Special Criminal Revision Appl. are without jurisdiction as the learned Addl. Sessions Judge had no jurisdiction to entertain the said revision application. When the petitioner has successfully shown that the learned Addl. Sessions Judge had no jurisdiction to pass the impugned order cancelling his bail, then in that event, it would become the duty of this Court to exercise constitutional powers, in order to interfere with the said judgment and order of the Sessions Court.

13. In that view of the matter, when the judgment and order of the Sessions Court are illegal, they are required to be set aside by exercising constitutional writ jurisdiction.

14. For the foregoing reasons, this petition is allowed. The judgment and order dated 11/07/03 recorded by the learned Addl. Sessions Judge, Panchmahals at Dahod in Cr.R.Appl.No.43/2002 are set aside. Rule is made absolute to the above extent.

(D. P. Buch, J.)

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