

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**CRIMINAL MISC.APPLICATION (FOR CANCELLATION OF BAIL) NO.
9408 of 2013**

With

CRIMINAL MISC.APPLICATION NO. 9423 of 2013

With

CRIMINAL MISC.APPLICATION NO. 15823 of 2013

In

CRIMINAL MISC.APPLICATION NO. 9423 of 2013

With

CRIMINAL MISC.APPLICATION NO. 15825 of 2013

In

CRIMINAL MISC.APPLICATION NO. 9408 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE S.G.SHAH

- 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 the 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 ?

ANIRUDHBHAI CHETANBHAI AGRAVAT....Applicant(s)

Versus

STATE OF GUJARAT & 3....Respondent(s)

Appearance:

MR ASHISH M DAGLI and MR PY JASANI ADVOCATES for the Applicants

MS MOXA THAKKAR and MS JIRGA JHAVERI, APPs for the Respondent(s)
No. 1

RULE SERVED BY DS for the Respondent(s) No. 2 - 4

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CORAM: HONOURABLE MR.JUSTICE S.G.SHAH

Date : 30/11/2013

CAV COMMON JUDGEMNT

In main Criminal Misc. Applications, Rule was issued on 18/6/2013. After service of rule, matters were heard on 30/9/2013. Till then, the respondent nos. 2 to 4 in Criminal Misc. Application No. 9408/2013 and respondent no. 2 in Criminal Misc. Application No. 9423/2013 being original accused did not appear and, therefore, after hearing the learned advocate for the applicants and Ld. APP, the matters were kept for judgment. Before judgment is delivered, on 3/10/2013 original accused have preferred such Criminal Misc. Applications to avail an opportunity of being heard before passing final order in Criminal Misc. Applications. Therefore, on 10/10/2013 all matters were heard together. Considering the facts and circumstances as narrated hereinabove, Criminal Misc. Application No. 15823/2013 and Criminal Misc. Application No. 15825/2013 were considered and Ld. Advocate Mr. Pratik Jasani for the applicants was given an opportunity to submit and oppose the main

applications for cancellation of bail in favour of the accused. To that extent, Criminal Misc. Applications are allowed and disposed of accordingly.

2 So far as main Criminal Misc. Applications are concerned, they are with reference to the same FIR being Bhayavadar Police Station being C.R. No. I-27/2012, wherein 7th Addl. Sessions Judge of Rajkot at Dhoraji had allowed the bail application of original accused by judgment and order dated 8/4/2013 in Criminal Misc. Application No. 5/2013 and dated 18/4/2013 in Criminal Misc. Application No. 22/2013. Such orders are challenged before this Court in Criminal Misc. Application Nos. 9408/2013 and 9423/2013. By such orders, all four accused have been released on bail in connection with the offences punishable under sections 302, 450, 397, 114, 201 and 120-B of the Indian Penal Code and under sections 37[1] and 135 of the Gujarat Police Act, on furnishing surety of Rs.20,000/- with certain conditions.

3 Heard Ld. Advocate Mr. Ashish Dagli for the applicant - complainant, who has preferred both these applications for cancellation of bail by setting aside the above referred impugned orders and Mr. Pratik Jasani, Ld. Advocate for

the accused - respondents as well as Ms. Moxa Thakkar and Ms. Jirga Jhaveri, Ld. APP for the respondent - State.

4 There is no dispute that cancellation of bail can be prayed for on two separate concepts [i] illegality or irregularity by the trial Court in granting the bail and [ii] because of breach of any condition of bail or any activity by the accused which calls for cancellation of bail. There is no dispute that in the present case, original complainant is not alleging any breach of condition of bail or there is no allegation against accused respondents who are released on bail about their activities after bail was granted in their favour. It is also not in dispute that charge-sheet is now filed and trial may commence at any time.

5 Therefore, the present applications are challenging the legality and validity of the impugned orders of bail and praying to quash and set aside the impugned orders, thereby to send the accused - respondents in judicial custody till final disposal of the Sessions case. Law of bail is now well settled. Except in a heinous crime with positive cogent evidence, which prima-facie shows that there is every possibility of confirming conviction of the accused, bail is the

rule and not the custody in jail of all the accused even if they have committed some offence. Such principle is more strict when there is no direct evidence and entire case is based upon circumstantial evidence only. Though bail can be refused even in the case of circumstantial evidence, such case of circumstantial evidence must be direct, reliable and cogent so as to confirm the involvement and conspiracy of all accused. However, there is vast difference in scrutinizing available evidence at such stage of consideration of bail and at final trial. Though at present only prima-facie evidence is to be looked into so as to ascertain whether there is chance of possibility of confirmation of sentence, it is difficult to evaluate and discuss for any conclusive determination the available evidence on record since it would otherwise prejudice the trial. It is well settled that only because of filing of FIR and charge-sheet against accused and only because of objection by the complainant or prosecution, bail cannot be cancelled, relying only upon the story narrated in the police papers.

6 With above settled legal position, if we scrutinize and verify the case in hand, the story of the complainant and prosecution is quite dramatic when it is alleged that the accused no.

1 has given a contract to accused nos. 2, 3 and 4 to kill the victim because wife of accused no. 1 has started to stay with the victim after divorce between the accused no. 1 and his wife. Though such motive seems to be possible and attractive, scrutiny and perusal of police papers which are now available because of filing of the charge-sheet, makes it clear that mother and other relatives of the victim himself had categorically admitted that practically victim himself is a head strong person and involved in several crimes and arrested several times. It was also clear from the police papers that he had been released by the jail just before couple of months and since he does not have any activity, he used to chat with the wife of accused no. 1 and they fell in love. It is also admitted fact that because of such love affairs, accused no. 1 had given divorce to his wife, but considering nature of activity by the victim and accused no. 1, it cannot be said that for such reason there is a motive of accused no. 1 to kill the victim and for that he would have given contract to accused nos. 2 to 4. In any case, at present we do not have to decide the trial or to confirm either conviction or acquittal. Therefore, whatever observed hereinabove is solely for the purpose of deciding these applications. To that extent, the trial Court should not influence itself while

deciding the culpability of all the accused. However, after hearing both the parties and after verification of available record as well as impugned order, it seems that there is no illegality or irregularity by the trial Court in granting bail in favour of the accused and hence prayer to cancel the bail cannot be accepted.

7 Ld. Advocate Mr. Jasani for the original accused relies upon decisions rendered in the cases of Dolat Ram v. State of Haryana reported in [1995] 1 S.C.C. 349 and Subhendu Mishra v. Subrat Kumar Mishra reported in 2000 S.C.C. [Criminal] 1508. The Ld. Sessions Judge has also referred several citations. I do not wish to discuss all such decision at present since prima-facie there is no illegality or irregularity in the impugned order. Therefore, I do not wish to even reproduce the history of bail applications when there is no reason to cancel bail granted in favour of the original accused more particularly now when the charge-sheet is already filed and trial would commence at any time.

8 In view of above facts and circumstances of the case, both the Criminal Misc. Applications for cancellation of bail are hereby rejected. Rule is discharged.

(S.G.SHAH, J.)

* Pansala.