

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 16087 of 2017**

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STATE OF GUJARAT

Versus

JAIMINBHAI RANCHHODBHAI PATEL

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Appearance:

MR HS SONI, APP for the Applicant(s) No. 1

MR ZUBIN F BHARDA(159) for the Respondent(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**Date : 29/04/2022****ORAL ORDER**

1. Present application is filed under section 439(2) read with 482 of Cr.P.C, seeking for cancellation of anticipatory bail which has been granted to opponent - accused No. 2 by order dated 19.05.2017 passed in Criminal Misc. Application No. 392 of 2017 by the learned 5th Additional Sessions Judge, Ankleshwar.

2. The case of the applicant is that the present opponents were apprehending their arrest in connection with FIR being C.R. No. 1-98 of 2017 lodged before Ankleshwar City Police Station in which the respondent - accused along with other accused persons committed serious offence

punishable under sections 143, 427, 447, 384, 504, 506(2), 467, 468, 471, 120(B) of IPC and in connection with this, an application was submitted before the Court below.

3. The present application is filed merely on the premise that while exercising discretion under section 438 of Cr.P.C., proper reasons have not been assigned nor the particulars with regard to the accused persons' criminal antecedents have been examined at length. It has been further submitted that the learned Judge has completely overlooked that there are two other offences similar in nature lodged against the present respondents, in which in one case, he was shown as main accused. Still by ignoring such material, the discretion is exercised under section 438 of Cr.P.C. and that being so, the present application is submitted seeking such cancellation of bail.

4. When the matter is taken up for hearing, learned APP Mr. Soni has submitted that the present respondent - accused has committed serious offence in connivance with the other accused persons who are having criminal antecedents and learned Judge while exercising discretion

has not examined the role which has been attributed to the present respondent. He has also submitted that while passing the impugned order, the learned Judge has not assigned the proper reasons, as a result of this, in the absence of any analysis of role attributed to the present respondent - accused, the discretion exercised suffers from the vice of irregularity and as such the order which has been passed granting anticipatory bail dated 19.05.2017 deserves to be quashed. No other submission are made.

5. Per contra, learned advocate Mr. Bharda appearing for the respondent - accused has submitted that so far as the present opponent is concerned, there are no criminal antecedent which has even been examined by the learned Sessions Judge while exercising discretion. The learned Judge has also examined the fact that the dispute which arose between the parties, is of a civil in nature and with respect of transactions, the Civil Suits are also pending before the competent Court at Ankleshwar being Suit No. 58 of 2017. It has also been submitted that this application has been submitted only on account of the fact that the learned APP then was an Advocate on behalf of the complainant and he

represented in the present proceedings against the accused and that fact having been closely examined by the learned Sessions Judge while exercising discretion, no irregularity appears. The narration of such fact has been brought to the notice of this Court reflecting in paragraphs 18 and 20 and thereby submitted that since there are no criminal antecedents of present respondent nor any condition being violated for grant of anticipatory bail, the application does not deserve to be entertained.

6. It has been further submitted that it has been clearly asserted in the detailed affidavit that on account of transaction essentially of a civil nature, the suits are also pending before the Court, hence, in the absence of any distinct reliable material, the discretion which has been exercised by assigning cogent reasons, may not be interfered with. Learned advocate Mr. Bharda submitted that there are no cogent circumstances stated in the application which may permit the Court to cancel the anticipatory bail once has been granted way back in May, 2017. That being the situation, a request is made to dismiss the application.

7. Having heard learned advocates for the parties and having gone through the order impugned, it has been clearly mentioned in the order that so far as the present respondent is concerned, there are no other criminal antecedent and further the fact of representation by the learned APP on behalf of original complainant against the accused has also been examined by the learned Sessions Judge. It has also been clearly reflected from the order that for alleged incident which has been erupted, civil suit before the Civil Court, Ankleshwar is also filed being Civil Suit No. 58 of 2017 and the Civil Suit is pending before the Court at present also.

8. Considering the long lapse of time and in view of the fact that present respondent - accused has not misused the liberty nor it is the case of the State authority that any violation of condition has taken place and it is also not been reflected from the order that material circumstances have been ignored by the Court while exercising discretion, hence, in view of this, the Court is of the clear opinion that no case is made out for cancellation of anticipatory bail which has already been granted way back in May, 2017.

9. While arriving at this conclusion, the Court has also kept in mind the following proposition of law laid down by the Hon'ble Apex Court : -

(i) Myakala Dharmarajam & Ors. versus the State of Telangana & Anr. reported in (2020) 2 SCC 743

"8. In Raghubir Singh v. State of Bihar this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to."

(ii) X. v State of Telangana & Anr., reported in (2018) 16 SCC 511 :

"14. In a consistent line of precedent this Court has emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In adverting to the distinction, a Bench of two learned Judges of this Court in Dolatram v State of Haryana⁴ observed that:

"4. Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances

are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.

15. These principles have been reiterated by another two Judge Bench decision in Central Bureau of Investigation, Hyderabad v Subramani Gopalakrishnan⁵ and more recently in Dataram Singh v State of Uttar Pradesh:

"23. It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether

any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.

18. For the above reasons, we hold that the order of the High Court allowing the application for bail cannot be faulted. Moreover, no supervening circumstance has been made out to warrant the cancellation of the bail. There is no cogent material to indicate that the accused has been guilty of conduct which would warrant his being deprived of his liberty."

(iii) Manoj Kumar Khokhar v State of Rajasthan & Anr., reported in (2022) 3 SCC 501 :

"29. Recently in Bhoopendra Singh vs. State of Rajasthan & Anr. (Criminal Appeal No. 1279 of 2021), this Court made observations with respect to the exercise of appellate power to determine whether bail has been granted for valid reasons as distinguished from an application for cancellation of bail. i.e. this Court distinguished between setting aside a perverse order granting bail vis-a-vis cancellation of bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. Quoting Mahipal vs. Rajesh Kumar – (2020) 2 SCC 118, this Court observed as under:

"16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been

granted.”

38. Thus, while elaborate reasons may not be assigned for grant of bail or an extensive discussion of the merits of the case may not be undertaken by the court considering a bail application, an order de hors reasoning or bereft of the relevant reasons cannot result in grant of bail. In such a case the prosecution or the informant has a right to assail the order before a higher forum. As noted in Gurcharan Singh vs. State (Delhi Admn.) – 1978 CriLJ 129, when bail has been granted to an accused, the State may, if new circumstances have arisen following the grant of such bail, approach the High Court seeking cancellation of bail under section 439 (2) of the CrPC. However, if no new circumstances have cropped up since the grant of bail, the State may prefer an appeal against the order granting bail, on the ground that the same is perverse or illegal or has been arrived at by ignoring material aspects which establish a prima-facie case against the accused.”

10. In view of consideration of overall material on record and the stand of applicant – authority and preposition as narrated above, this Court is of the opinion that no case is made out to entertain the present application and the same is **DISMISSED** accordingly. Notice is discharged.

AMAR SINGH

(ASHUTOSH J. SHASTRI, J)