

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR MODIFICATION OF ORDERS)
NO. 6046 of 2024**

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CHAITARBHAI DAMJIBHAI VASAVA
Versus
STATE OF GUJARAT
=====

Appearance:

MR ZUBIN F BHARDA(159) for the Applicant(s) No. 1
MR MITESH AMIN, ADDITIONAL ADVOCATE GENERAL WITH
MR J K SHAH, APP for the Respondent(s) No. 1
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CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY

Date : 15/04/2024

ORAL ORDER

1. The present application is filed by the applicant with the following prayer(s):-

“9(A) That this Hon’ble Court may be pleased to admit and allow this application.

(B) That this Hon’ble Court be pleased to quash and set aside the Condition Nos.2 & 5 imposed vide order dated 22.01.2024 passed by the learned Principal Sessions Judge, Narmada at Rajpipla in Criminal Misc.Application No.11 of 2024 restraining the petitioner from entering into the limits of District Narmada and from residing at any place other than the Bharuch District till the trial is over. And in turn be pleased to delete the Condition Nos.2 & 5 imposed by the learned Principal Sessions Judge, Narmada at Rajpipla in Criminal Misc.Application No.11 of 2024.

(C) Pending hearing and final disposal of this petition, this Hon’ble Court be pleased to stay the operation of Condition Nos.2 & 5 imposed vide order dated 22.01.2024 passed by the learned Principal Sessions Judge, Narmada at Rajpipla in Criminal Misc.Application No.11 of 2024

restraining the petitioner from entering into the limits of District Narmada and from residing at any place other than the Bharuch District till the trial is over and in turn allow the petitioner to enter Districts Narmada and Bharuch.

(D) “

2. Learned advocate for the applicant has submitted that the FIR being I-CR-No.11823004231271 of 2023 came to be registered against present applicant with Dediapada Police Station, Dist:Narmada for the offences punishable under Sections 143, 147, 148, 149, 186, 189, 332, 353, 386, 294(B), 506(2) and 34 of the Indian Penal Code and Section 25(1)(a) of the Arms Act. In the said offence, earlier, the applicant had preferred an application for anticipatory bail, which was dismissed by this Court vide order dated 04.12.2023, and therefore, the applicant had surrendered before the Investigating Agency and upon surrender, the applicant was taken into custody, and thereafter, after conclusion of the investigation, the charge-sheet came to be filed against him. After filing of the charge-sheet, the present applicant had preferred an application before the concerned Sessions Court seeking regular bail under Section 439 of the Code of Criminal Procedure. The said application being Criminal Misc.Application No.11 of 2024 came to be allowed by the Sessions Judge, Narmada at Rajpipla vide order dated 22.01.2024. However, while ordering to enlarge the applicant on bail, the following conditions were imposed by the Sessions Court.

“Condition No.2 :- The applicant shall not enter the limits of Narmada District till conclusion of trial.

Condition No.5 :- Pending the trial, the applicant shall reside at the place not falling part of Narmada and Bharuch Districts and shall also furnish the details as regard his address and mobile number.”

2.1 Learned advocate for the applicant has submitted that while the aforesaid bail application filed by the present applicant was being considered by the Sessions Court, it was brought to the notice of the Sessions Court that the applicant was declared as a candidate for the ensuing parliament election for the Bharuch constituency by one political party and if any such condition is imposed, the political career of the applicant will be ruined since the trial of the case is likely to take some time. It was, therefore, submitted to the Sessions Court not to impose any such condition while ordering to enlarge the applicant on bail. The Sessions Court without having regard to the submissions made by learned advocate appearing for the applicant, had imposed such conditions. The applicant had therefore, approached the Sessions Court for deletion of the aforesaid conditions. However, the prayer made by the applicant was turned down by the Sessions Court on the flimsy grounds.

2.2 Learned advocate for the applicant has submitted that if the applicant is restrained from entering into the Districts of Narmada and Bharuch, the applicant being an elected member of the legislative assembly, the electorate of his constituency will be deprived of its efficacious representation in the legislative assembly. Moreover, since the applicant is aspiring to contest the ensuing parliamentary election, if the aforesaid conditions are allowed to operate, he will be deprived of his statutory right

of contesting the election in free and fair manner. He, therefore, submitted to allow the present application and delete the aforesaid conditions.

2.3 In the alternative, learned advocate for the applicant has submitted that the operation of the aforesaid conditions may be suspended till the ensuing parliamentary election is over to enable the applicant to contest the election.

3. Mr.Mitesh Amin, learned Additional Advocate General has opposed the present application inter alia contending that the aforesaid conditions were imposed by the Sessions Court having regard to the conduct of the present applicant. The applicant had even misused the liberty granted to him by the Sessions Court by making some unwarranted utterances, which amounts to browbeating the government machinery as well as the public at large.

3.1 Learned AAG has submitted that the applicant has not abided by the conditions imposed by the Sessions Court while ordering him to be enlarged on bail. In view of aforesaid conditions, the applicant was required to furnish his address and mobile phone number either to the Investigating Agency or to the concerned Trial Court. The applicant, by filing a pursis, has declared his address of Gandhinagar in partial compliance of the aforesaid condition. However, in present case, different address is mentioned. The applicant has also not declared his mobile phone number before any of the authorities, as required in view of the aforesaid conditions.

3.2 Learned AAG has submitted that the present applicant had made some utterances, which were absolutely unwarranted and did not befit the conduct of the elected member of legislative assembly. These utterances were repeated by him on several occasions and there are witnesses to these utterances having been made by the applicant.

3.3 Learned AAG has submitted that the applicant has not cooperated with the investigation, as he has declined consent for being subjected to various scientific tests. He, therefore, submitted to dismiss the present application.

4. Heard learned advocates for the parties and perused the material available on record. From the record, it appears that a registered political party has nominated the present applicant to be its candidate for ensuing parliamentary election for the Bharuch constituency. Contesting an election is a statutory right of the applicant being a citizen of India to enable the present applicant to contest the ensuing election, by way of an interim relief, the aforesaid conditions are ordered to be suspended till the next date of hearing.

Stand over to 12.06.2024.

Direct service is permitted.

GIRISH

(M. R. MENGDEY,J)