

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 5267 of 2022
[On note for speaking to minutes of order dated 17/03/2022 in
R/CR.MA/5267/2022]

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MAYANK JAYANTBHAI SHAH S/O JAYANT MANHARLAL SHAH
Versus
STATE OF GUJARAT

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Appearance:

MS.DILBUR CONTRACTOR(6388) for the Applicant(s) No. 1

MR JK SHAH, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 19/03/2022

ORAL ORDER

Heard Ms. Dilbur Contractor, learned advocate for the applicant and Mr. J.K. Shah, learned APP for the respondent-State.

In the order dated 17.03.2022, in para 1 and 5 the FIR number be read as **“FIR being C.R.No. 11210002220285 of 2022”** instead of **“FIR being C.R.No. 11210002220107 of 2022”**, and in para 2.6 fourth line it is mentioned **“Manifest-41 and Invoice No.55”** instead of that the following sentence be read as **“Manifest produced at page 41 and Invoice produced at page 55”**.

The note for speaking to minutes is disposed of. Registry is directed to issue fresh writ accordingly. Direct service is permitted.

(GITA GOPI,J)

A.M.A. SAIYED

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R/CRIMINAL MISC.APPLICATION NO. 5267 of 2022

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MAYANK JAYANTBHAI SHAH S/O JAYANT MANHARLAL SHAH
Versus
STATE OF GUJARAT

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Appearance:

MR ND NANAVATI, SENIOR ADVOCATE ASSISTED BY MS.DILBUR
CONTRACTOR(6388) for the Applicant(s) No. 1

MR JK SHAH, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 17/03/2022

ORAL ORDER

1. This application has been filed under section 439 of the Code of Criminal Procedure for regular bail in connection with the FIR being C.R.No. 11210002220107 of 2022 registered with Sachin GIDC Police Station, District Surat, for offences punishable under Sections 277, 284, 336, 337, 342, 465, 467, 468, 471, 120-B and 34 of Indian Penal Code and Section 15 of Environment Protection Act.

2. Mr.N.D.Nanavati, learned Senior Advocate assisted by Ms. Dilbur Contractor, learned advocate for the petitioner submitted that initially Sections 284, 120-B, 34 of IPC and Section 15 of Environment Protection Act was invoked in the FIR dated 19.01.2022 and later on by a report dated

25.01.2022 another Sections 277, 336, 337, 342, 465, 467, 468, 471 of IPC came to be included. Mr. Nanavati, learned Senior Advocate for the petitioner submitted that out of all sections so invoked; Sections 467, 468 would be non-bailable and with regard to Section 15 of Environment Protection Act, he states that it could be only by a complaint through an authorised officer.

2.1 Mr. Nanavati, learned Senior Advocate for the petitioner submitted that the present petitioner is a director of one company named Chemie Organic Chemicals Private Limited (for short "COCPL") since 03.11.2003. Learned Senior Advocate for the petitioner submitted that some time in the month of January 2021, M/s. Sangam Enviro Pvt. Ltd. (for short "Sangam") approached COCPL and informed that it is into business of lifting of co-process material on behalf of cement industries for co-processing purposes. It was also represented that Sangam was lifting co-process material with a trans-boundary manifest process in accordance with Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016, (for short "the Rules"). Learned Senior Advocate for the petitioner submitted that on the basis of representation made by Sangam, COCPL from time to time

dispatched the waste through Sangam to various cement industries for co-processing purposes.

2.2 Mr. Nanavati, learned Senior Advocate for the petitioner submitted that in August 2021, Sangam represented that it has been delivering waste material to Dalmia from various chemical industries and that it can dispatch the waste generated at the COCPL unit at Jhagadia, Gujarat to Dalmia in Odisha and further informed by Sangam that Dalmia has authorised Sangam to collect, transportation of hazardous waste material to Dalmia plants (in units at Odisha, Karnataka, Bihar) as per CPCB co-processing guidelines 2016 and 2017 and Rules.

2.3 Mr. Nanavati, learned Senior Advocate for the petitioner submitted that since there were no issues in the services rendered by Sangam from January, 2021, COCPL had no reason to suspect any foul play on the part of Sangam, and accordingly, in good faith to initiate business with Dalmia, COCPL requested Sangam to provide its quotation towards co-processing charges alongwith relevant documents. It has been submitted that acceding to the request made by COCPL, Sangam provided a copy of Letter of Authorisation dated

24.05.2021 issued by Dalmia in favour of Sangam, and on the basis of representations made by Sangam to COCPL, COCPL dispatched "Sodium Thiosulfate" ("said waste material") to Dalmia at its unit in Odisha and Karnataka through Sangam between September 2021 to 31st December, 2021.

2.4 Mr. Nanavati, learned Senior Advocate for the petitioner submitted that, while dispatching the said waste material, COCPL obtained necessary manifest generated on the portal of Gujarat Pollution Control Board ("GPCB") in respect of the tankers, which were dispatched from the unit of COCPL to Dalmia. He submitted that once the said waste materials were supplied by Sangam to Dalmia as a process of delivery confirmation, Sangam used to send six copies of manifests duly signed and stamped by Dalmia, and on receipt of the manifests and the tax invoices which were raised by Sangam towards its scope of work, COCPL made payment to Sangam towards co-processing charges. Thus, in furtherance of the process, COCPL received delivery confirmation from Sangam with respect to the tanker in question which is alleged to be involved in the present FIR bearing registration No. GJ-06-ZZ-6221 as mentioned in Manifest No. 1492280 dated 23.12.2021.

2.5 Mr. Nanavati, learned Senior Advocate for the petitioner submitted that as per the Letter of Authorisation dated 24.05.2021 which was given by Dalmia to Sangam was valid only for six months, Sangam issued a declaration dated 12.11.2021, inter alia, stating that it has authorisation from Dalmia for all three units i.e. Odisha, Karnataka and Bihar and it works as an intermediary service provider for purposes of co-processing of hazardous waste, which includes work of collection, transportation of hazardous waste to Dalmia in the aforesaid units. The arrangement for transportation for alternative fuel and raw material are required to be done as per the agreement between Dalmia and Sangam; and thus, the present petitioner as a director of COCPL would have no control on the transport of the waste which had been collected at the instance of Dalmia by Sangam.

2.6 Mr. Nanavati, learned Senior Advocate for the petitioner submitted that, as per the allegation that on 23.12.2021 the co-processing waste dispatch vide Tanker bearing registration No.GJ-06-ZZ-6221 with Manifest - 41 and Invoice No.55 on 23.12.2021 at 4.00 p.m., and it is alleged that the waste was disposed of in creek from the said tanker at 1:15 a.m. on 24.12.2021, and as per counter-sign of Dalmia on manifest of

the tanker was received by the company on 29.12.2021 and the first FIR was lodged on 06.01.2022 and the present FIR was lodged on 19.01.2022 and the petitioner was arrested on 06.02.2022. He submitted that after a delay of long period i.e. from 09.01.2022 the two persons complained about the burnings sensation. Mr. Nanavati submitted that the petitioner would have no knowledge about the waste material when there was contract of Sangam with Dalmia and it was the responsibility of Dalmia Cement company to ensure that the material sent by the petitioner company reached at the destination, since Sangam was the authorised transporter.

2.7 Mr. Nanavati, learned Senior Advocate for the petitioner submitted that, after having knowledge of illegal activities by Sangam, the petitioner had terminated all the contract agreement with effect from 03.01.2022 with Sangam. In view of the aforesaid facts and circumstances of the case, learned Senior Advocate for the petitioner prayed that the present application may be allowed and the petitioner herein may be released on regular bail.

3. Learned APP Mr.J.K. Shah submitted that, on the instructions of the present petitioner, one sided agreement

was executed, and false and forged signature of the witness one Yashwant Dinanath Bhogle was taken and another forged signature of the witness being employee Rajesh Hardshadrai Patel was taken by which the said document was made on 16.01.2022, and on the very same day, the present petitioner has called the Deputy General Manager of Dalmia to inform that Sangam had earlier contacted the company for hazardous waste and for that there would be a police inquiry. Learned APP submitted that the present petitioner had tried to manipulate the investigating process and had instructed Dalmia that the payment was made to Sangam by its company and thereafter it was paid to Dalmia and instructed them to inform the police that there is no final agreement. Learned APP submitted that, for their own interest, a false agreement with forged signature was executed and had tried to tamper with the evidence to misdirect the investigation. Learned APP submitted that on 25.01.2022 the present petitioner had tried to confirm the fact with Dalmia regarding installments of GPS system and payment made to Sangam. Learned APP submitted that the agreement between COCPL and Dalmia was never finalised and the signature was only of Dalmia where the agreement was not finalised by COCPL. Learned APP submitted that by giving false information, manifest was

generated and the driver of tanker bearing registration No. GJ-06-ZZ-6221 was shown to be Surendrasinh Jitendrasinh; while the driver in the Manifest was shown as Majidbhai, and without making reference of Surendrasinh Jitendrasinh, the manifest was uploaded of GPCB site, and during the course of investigation it was found that the details of the transporter as noted Shree Sai Tanker was not mentioned in the manifest and there was no such transport company and in manifest there was no reference of Sangam. Learned APP submitted that it was a conspiracy and under the instructions of present petitioner the hazardous waste was disposed of in a creek which has caused injury to two persons. Learned APP therefore urged that no discretion may be exercised in favour of the petitioner.

4. Heard learned advocates on both the sides and perused the material on record. The communication on record suggest that the letter of authorisation was given by Dalmia to Sangam whereby Sangam was authorised to provide the work of collection, transportation of hazardous waste material to Dalmia Cement Bharat Limited plants at Odhisa, Karnataka and Bihar, and the authorisation for transportation of hazardous waste materials was in accordance to CPCB Co-processing

guidelines 2016 and 2017, and therefore, it would be the responsibility of the transporter to take waste by-products to its destination. The petitioner company or the petitioner himself would have no knowledge of any misdeed of the transporter. The liability would lie on the company who engages the transporter and it is the duty of the transporter to see that the said waste product reaches plant or to its destination. For the non-bailable offence punishable under Sections 467 and 468 of IPC are concerned, it is not clear on record that which of the document would be a valuable security where there is any allegation of forgery. The agreement which is stated to be forged do have signature of Dalmia which was found in custody of the petitioner company. It therefore does not become clear as to how any such delivery of waste product was done for the purpose of cheating where there are contractual transaction between Dalmia and present petitioner company through Sangam. Thus, taking all these facts into consideration and also the fact that the trial will take its own time to conclude; this Court is of the opinion that the discretion could be exercised in favour of the petitioner to enlarge him on bail.

5. Hence, the present application is allowed. The petitioner

is ordered to be released on regular bail in connection with FIR being C.R.No. 11210002220107 of 2022 registered with Sachin GIDC Police Station, District Surat, on executing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall;

- [a] not take undue advantage of liberty or misuse liberty;
- [b] not act in a manner injurious to the interest of the prosecution;
- [c] surrender passport, if any, to the lower court within a week;
- [d] not leave India without prior permission of the concerned trial court;
- [e] furnish the present address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of the concerned trial court;

6. The authorities shall adhere to its own Circular relating to COVID-19 and, thereafter, will release the petitioner only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the lower Court having jurisdiction to try

the case.

7. Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.

A.M.A. SAIYED

(GITA GOPI,J)

