

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION NO. 16169 of 2017**

VIJAYBHAI PUNABHAI CHAVDA  
Versus  
STATE OF GUJARAT & 13 other(s)

**Appearance:**

MR RAJESH K SHAH(784) for the Applicant(s) No. 1  
YASHODHARA M PANDYA(9124) for the Applicant(s) No. 1  
MR PS CHAMPANERI(214) for the Respondent(s) No.  
10,11,12,13,3,4,5,6,7,8,9  
NOTICE SERVED BY DS for the Respondent(s) No. 14,2  
MR HARDIK SONI, ADDL PUBLIC PROSECUTOR for Respondent(s) No. 1

**CORAM:HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**

**Date : 06/05/2022**

**ORAL ORDER**

**1.** By way of this application, under Section 439(2) read with Section 482 of the Code of Criminal Procedure, applicant- original complainant has assailed the order dated 16.6.2017 passed in Criminal Misc. Application No.441 of 2017 below Exh. 16 by virtue of which, regular bail has been extended to respondent Nos.3 to 14 herein, who are original accused in the complaint.

**2.** Case of the complainant is that complainant is a resident of village Khorasha (Gir), Taluka Malia-Hatina, District Junagadh and belonged to Scheduled Caste community and respondent Nos.3 to 14 belonged to Aahir community and economically and socially strong in the society. Some of the respondents have criminal antecedents as well and tried to grab the land of the Government, adjacent to the applicant's land, hence unfortunate incident took place, as a result of this, criminal complaint came to be filed before DSP on 1.6.2017, which was later on sent to IGP, Junagadh and other respective authorities.

**3.** The case of the complainant is that on account of assault being made by respondent Nos.3 to 14 on the complainant and his family members, filed a complaint which came to be registered before Chorwad Police Station, being C.R. No.I-23 of 2017 on 26.5.2017 for the offences punishable under Sections 143, 147, 323, 324, 505, 427 of the Indian Penal Code and Sections 3(1)(r)(s) and 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 135 of the G.P. Act.

**4.** It is the say of the complainant- applicant that respondent Nos.3 to 14 were arrested and were sent to judicial custody. As a result of this, they preferred regular bail application before learned Sessions Court, Junagadh being Criminal Misc. Application No.441 of 2017. After considering the material on record, learned Sessions Judge passed an order of grant of bail to respondent Nos.3 to 14 by passing order on 16.6.2017 below Exh.16, which order is made subject matter of present application for seeking cancellation of bail.

**5.** Learned advocate Mr. Rajesh K. Shah appearing for the applicant has vehemently contended that respondents- accused are headstrong persons in the society and have committed serious crime and as such, the order which has been passed in casual manner without considering the material of each of the accused persons, is practically a non-speaking order. It has been submitted that if these headstrong persons are allowed to roam freely in the society, there will be a danger not only to the prosecution but also to the complainant and his family members and as such, request is made to cancel the bail. However, Mr. Shah has candidly submitted that pursuant to this complaint, detailed investigation is carried out and charge-sheet has been filed and now, the case is already set on motion for its disposal, which is registered as Atrocity Special Case No.40 of 2017 and next date of hearing is 20.6.2022, which is at the

stage of recording evidence of prosecution and it has fairly been submitted that after release on bail, no untoward incident of any nature has occurred which has apprehended the applicant and has then left to the discretion of the Court.

**6.** Learned Additional Public Prosecutor Mr. Hardik Soni has pointed out to the Court that State has not filed any application for cancellation nor from the material, it is emerging that present respondents have violated any of the conditions of bail nor has made any attempt to misuse the liberty and now, since the case is already set on motion for trial has left it to the discretion of the Court without much resistance.

**7.** As against this, learned advocate Mr. P.S. Chamnaperi appearing for respondents- accused has submitted that undisputedly, the case is put for trial and it is at the stage of recording of evidence of prosecution and next date is also fixed, it is desirable in the interest of justice not to cancel the bail, particularly when the same had been granted way back in the year 2017. It has further been submitted that after release on bail in June, 2017, no untoward incident has taken place nor respondents have breached the condition(s) of bail in any manner nor have made any attempt which can be said to be misuse of liberty and as such, when State Government has not preferred any application for cancellation of bail in view of this peculiar background of facts and long period of time having elapsed, and looking to the parameters which are prescribed for grant of bail and cancellation thereof, the Hon'ble Court may not exercise the discretion since no case is made out by the applicant to cancel the bail.

**8.** Having heard learned advocates appearing for the parties and having gone through the afore-mentioned submissions made before the Court, it is clearly revealed that detailed order is passed by

learned Special Atrocity Judge on 16.6.2017 by imposing suitable conditions which can take care of the situation of both the sides and further, while passing the order and exercising due discretion, the narration of complaint has also been considered and as such, the order which was passed way back in the year 2017 cannot be said to be perverse in any form. Apart from that, it appears undisputedly, which is projected before the Court, that trial is already set on motion and the case has already been fixed on 20.6.2022, and further, there is no untoward incident has taken place after June 2017 nor any case is made out of breach of any of the conditions of grant of bail, hence this Court is not inclined to exercise discretion to cancel the bail which has been granted.

**9.** At this stage, on the issue of consideration for grant of bail for for cancellation of bail, he Court is assisted by the decision of the Hon'ble Apex Court in the case of **Myakala Dharmarajam & Ors., v. State of Telangana & Anr.**, reported in **(2020) 2 SCC 743** as also in the case of **X. v State of Telangana & Anr.**, reported in **(2018) 16 SCC 511** and finds that no case is made out by the applicant to call for any interference.

**10.** The Court while examining the issue as to whether the case is made out for cancellation of bail has taken note of the brief note given to learned APP which is placed on record, written by PSI, Chorwad Police Station. It appears that case is not made out to set aside the impugned order. As a result of this, in the absence of any parameters which are prescribed for cancellation of bail, it appears to this Court that application being devoid of merit, does not deserve to be entertained. Since the Court has considered and relied upon the observations made by the Hon'ble Apex Court, as stated, few observations contained in para 8 of the judgment in the case of **Myakala Dharmarajam (supra)** and para 14, 15 and 18 of the

decision in the case of **X. v State of Telangana (supra)**, the Court deems it proper to reproduce hereunder:-

Para 8 of decision in the case of **Myakala Dharmarajam (supra)**:

*“8. In Raghbir Singh v. State of Bihar<sup>2</sup> 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.”*

Para 14, 15 and 18 decision in the case of **X. v State of Telangana (supra)**:-

*“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 Haryana<sup>4</sup> 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 Gopalakrishnan<sup>5</sup> 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."

**11.** In view of the aforesaid proposition of law laid down by the Hon'ble Apex Court and in view of this peculiar background of facts narrated herein-above, which is also reflecting from the submissions of learned advocates, the Court sees no reasons to entertain the application. Accordingly, application stands **DISMISSED**. Notice is discharged.

**Sd/-**  
**(ASHUTOSH J. SHASTRI, J)**

OMKAR