IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 14875 of 2017

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AASIFBHAI HAJIABDUL BHAYA
Versus
STATE OF GUJARAT & 1 other(s)
==
Appearance:
MR AG JOSHI(365) for the Applicant(s) No. 1
MR DIPAK H SINDHI(5710) for the Applicant(s) No. 1
NOTICE SERVED for the Respondent(s) No. 2
MR. CHINTAN DAVE, APP for the Respondent(s) No. 1
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CORAM:**HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**

Date : 10/06/2022

ORAL ORDER

1. The present application is filed under Section 439 (2) read with Section 482 of the Code of Criminal Procedure for seeking quashment of the order dated 20.05.2017 passed by learned Sessions Judge, Devbhumi-Dwarka at Jam-Khambhalia in Criminal Misc. Application No.195 of 2017.

2. The case of the applicant i.e. original complainant is that on 18.02.2017, the complainant and his family members went to sleep at their house at about 11:00 p.m. and at midnight at about 3:00 a.m. i.e. on 19.02.2017, one of the family members woke up for natures call and found all the doors of the house and cupboards were open and locks were broken and found

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that all jewelries of family members including ancestral jewelry worth Rs.35,85,000/- and cash of Rs.6,50,000/- was stolen, so, totalling to around worth Rs.42,35,000/- was stolen from the house, as a result of this, a substantive complaint came to be filed on 19.02.2017, which was registered as First Information Report being I-C.R. No.2 of 2017 before Salaya Marine Police Station for the offences punishable under Sections 457, 454, 380 and 114 of the I.P.C. The respondent No.2 being an accused person came to be arrested by the authority and later on, learned Sessions Judge, Devbhumi-Dwarka vide order dated 20.05.2017 was pleased to grant bail application ordering the release of respondent No.2 by imposing suitable conditions as contained in the order and it is this order which is made the subject matter of challenge in the present proceedings.

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3. Learned advocate Mr.Dipak Sindhi appearing on behalf of the applicant has submitted that order passed by learned Judge is not only without proper application of mind but is also against the very object of Section 439 of Cr.P.C. While exercising due discretion, learned Sessions Judge has not appreciated and dealt with any material aspects governing the grant of bail. A very serious offence has been committed by

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the respondent No.2 and it has been stated before the Court that muddamal to the extent of Rs.3,72,900/- being the jewelry and 50,000/- cash has also been recovered from him which goes to show that the accused person is specifically involved in the commission of crime. It has further been submitted that the respondent No.2-accused is also a history-sheeter having several offences on head and so much so that during the pendency of the present proceedings, respondent No.2 has involved himself in almost similar kind of offences in more than four in numbers and as such looking to this track record of the respondent No.2 as well, the discretion which has been exercised deserves to be corrected. It has been submitted that while passing the impugned order, settled principles propounded by the Hon'ble Apex Court on the issue of bail have not been taken into consideration and has relied upon the decisions, which are narrated in the memo of the present application, and as such, has requested that since respondent No.2 has an audacity to commit the crime of similar nature even during the pendency of the present proceedings, the conduct ought not to be ignored and as such, present respondent No.2 does not deserve to be continued on the bail which permits him to commit further similar offences. Since the crime history of the respondent No.2 has also not

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been properly taken into consideration, the order deserves to be quashed.

4. Learned advocate appearing for the applicant has further submitted that no doubt the parameters of grant of bail and cancellation are well distinct but in view of the specific record, which is available and in view of the conduct and involvement of respondent No.2 in similar such kind of offences, the bail which has been granted deserves to be cancelled. Mr. Sindhi, learned advocate appearing for the applicant has further submitted that the present respondent No.2 has been served way back in the month of July-2017 but he has chosen not to co-operate with the hearing of the present application. With a view to give one more chance, the Court had also issued further notice on 06.05.2022 and though the said fresh notice has been served specifically, respondent No.2 has shown an audacity not to appear before the Court or represent himself. This conduct is also sufficient enough to quash the order. Learned advocate Mr. Sindhi has relied upon the decision dated 02.05.2022 passed in Criminal Misc. Application No.11447 of 2015 in which cancellation of bail has been ordered and as such keeping in view the said parameters, the Hon’ble Court may kindly quash the order in question.

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5. As against this, the learned APP appearing on behalf of the respondent-State has submitted that present respondent No.2 has been an accused person in several offences and has also placed a chart indicating the offences which are filed against him. By way of report dated 04.05.2022, it has been brought to the notice of this Court that during the pendency of this petition also, the respondent no.2 has committed further crime in the year 2017, 2018 and 2020 and two more offences have been committed in the year-2021 and by detailing of such kind of information, a request is made to cancel the bail by quashing and setting aside the order since libery is grossly misused. It has been submitted that this is a clear case of misuse of liberty granted to respondent No.2 and this being the circumstance, the order impugned deserves to be quashed. There is a serious violation of conditions contained in the bail order and if such kind of persons are allowed to move freely in the society, it would cause harm to the interest of public. It has been submitted that substantial amount of muddamal has also been recovered from the respondent No.2 and that being the position, in view of the criminal history of respondent No.2, the order granting bail deserves to be quashed. Learned APP has submitted that bare look of the order impugned would clearly indicate that relevant material

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has not been considered at all while exercising the discretion, hence order under challenge is perverse and suffers from the vice of non application of mind.

6. Having heard the learned advocates appearing for the respective parties as well as having perused the material placed on record, it is undisputed from the written instructions that there are total six offences of respondent No.2 and pursuant to the conditions which have been imposed in the order dated 20.05.2017, it appears that respondent No.2 has misused the liberty and grossly violated conditions and during the pendency of this application, similar offences have been committed by this respondent No.2. A chart of such offences, which the respondent No.2 stated to have committed is reproduced hereinunder:

Sr. No.	**C.R. No.**	**Section**	**Charge-sheet No.**	**Date of Charge-sheet**	**Remarks**
1	First C.R. No.02/17	Sections 380, 457 and 354 of I.P.C.	04/2017	13/04/2017	
2	First C.R. No.12/17	Sections 143, 323, 506(2) and 114 of I.P.C.	19/2017	05/12/2017	
3	First C.R. No.03/18	Sections 143, 147, 148, 349, 332 and 307 etc.	03/2018	06.04.2018	
4	Part-A C.R. No.0399/20	Sections 323, 504, 506(2) of I.P.C. and Section 135(1) of the G.P.Act	319/2020	29.06.2020	
5	Part-A C.R.	Sections 143, 147,	84/2021	20.07.2021	

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	No.0166/21	149, 323, 324 and 504 of the I.P.C.			
6	Part A C.R. No.0265/21	Sections 307, 308, 332 and 333 of I.P.C. and etc.	124/2021	18.10.2021	

7. One additional factor which has also been placed before the court is that this is a case of clear misuse of liberty of the bail and there are certain representations also made against to take appropriate steps against this very respondent No.2.

8. Additionally it has been noticed from the record that though respondent No.2 is served long back in the month of July-2017, no representation is made nor he has remained present and additionally even the further opportunity was granted vide order dated 06.05.2022, still respondent No.2 had shown an audacity not to remain present and no response is given to this Court’s notice. This mindset of the respondent No.2 also cannot be ignored while disposing of this application.

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9. The Court has been informed about the serious conduct of the present respondent No.2 from the report dated 05.05.2017 signed by P.S.I., Khambaliya Police Station, Dist-.Devbhoomi Dwarka in which it has been clearly indicated that when the accused person was taken to the court along

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with others, this very respondent No.2 had attacked the other accused as well as the police officer and thereby, the persons have been injured as is clearly reflected from the report dated 05.05.2017. In view of this report also, the Court is convinced that the respondent No.2 does not deserve any liberty to be continued. Further from the order impugned, it appears that relevant material has not been properly considered nor kept in mind which has resulted in perversity and irregularity in exercising discretion. Hence, order requires to be interfered with.

10. In view of the above overall circumstances as well as in view of well settled proposition of law propounded by Hon'ble Supreme Court in the case of:

"(i) In the case of ***Myakala Dharmarajam & Ors., v. State of Telangana & Anr.,*** reported in ***(2020) 2 SCC 743***.

> *"8. In Raghubir Singh v. State of Bihar2 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."*

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(ii) In the case of ***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:*
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> > *"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.*

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(iii) In the case of ***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.*

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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."

11. In view of the above circumstances which are prevailing on record, this Court is of the opinion that the applicant has made out a case for quashing and setting aside the impugned order dated 20.05.2017 passed by the learned Sessions Judge, Devbhumi Dwarka at Jamkhambhalia passed in Criminal Misc. Application No. 195 of 2017. From the overall circumstances, a

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case is made out by the applicant which may fall in the parameters which are prescribed by the aforesaid decisions and the proposition laid down by the Hon’ble Apex Court. Hence, this Court is of the clear opinion that liberty of the applicant may not be continued any further more. As a result of this, present application stands allowed and the authorities are at liberty to take suitable steps in accordance with law.

(ASHUTOSH J. SHASTRI, J)

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