

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION NO. 25080 of 2017**

RAJUBHAI KAMABHAI DESAI

Versus

STATE OF GUJARAT &amp; 1 other(s)

## Appearance:

MR ANIL C THAKORE(2324) for the Applicant(s) No. 1

MR.KANDARP D ACHARYA(2623) for the Applicant(s) No. 1

MR BS KHATANA(3671) for the Respondent(s) No. 2

MR VIRAJ B KHATANA(10416) for the Respondent(s) No. 2

MR CHINTAN DAVE, APP for the Respondent(s) No. 1

**CORAM:HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI****Date : 08/07/2022****ORAL ORDER**

1. Present Criminal Misc. Application is filed under Section 439(2) of the Code of Criminal Procedure for quashing impugned order dated 25.9.2017 passed in Anticipatory Bail Application No.1111 of 2017 by learned District and Sessions Judge, Mehsana for the offences alleged.
2. Background of facts of the instant case is that victim girl Maulika had gone to natural call on 18.6.2017 at about 1.30 p.m. and from there, she did not come back. Complainant started search for her and coming to know that respondent No.2, i.e. Anilbhai Naranbhai Desai, had induced and abducted the victim for the purpose of marriage and later on, on 8.7.2017, victim was found from Patan and upon inquiry, informed that on 18.6.2017, when she had gone, at that point of time, around 2.00 p.m., accused No.2 i.e. respondent accused and other persons came and forcefully took her in white car and administered threat that if she would raise any voice, she would be done away and due to some smelling material mixed in one handkerchief, she was made unconsciousness and when she regained consciousness, realized that she was in Seven Days Hotel at Mundra. Respondent accused subjected to her not only sexual intercourse

against her will but also got signatures on certain papers and thereafter, she was shifted to Naroda, Ahmedabad and was confined in one house. There also, respondent No.2 took liberty with her but some how, on 8.7.2017, she succeeded and escaped from the custody of respondent No.2 and reached at Patan. So much so, ornaments of victim and her mobile phone were also taken away by respondent No.2 and thereby has committed serious offence, which has resulted into filing of a complaint before Becharaji Police being I- C.R. No.47 of 2017 for the offences punishable under Sections 376, 366, 328, 395, 397, 344, 406, 420, 506(2) and 120(B) of the Indian Penal Code.

**3.** Respondent No.2 on account of this incident had filed one Habeas Corpus Petition and simultaneously being apprehending of his arrest, had filed an anticipatory bail application under Section 438 of Code of Criminal Procedure by contending that he is an innocent person and whatever alleged in the complaint is untrue.

**4.** Said application had come up for consideration before learned Sessions Judge, Mehsana, who by order dated 25.9.2017 was pleased to allow the application for anticipatory bail by imposing suitable conditions which are visible from the order in question.

**5.** It is this order of grant of anticipatory bail passed in the month of September 2017, which is made the subject matter of present Criminal Misc. Application for seeking cancellation thereof.

**6.** It appears that Rule was issued way back in the month of December 2017 and thereafter, it has come up for consideration before this Court, in which learned advocate Mr. Anil C. Thakore appearing for applicant, original complainant, has contended that serious offence of Section 376 is committed by respondent No.2 and as such, learned Sessions Judge has not appreciated the seriousness of the offence while extending protection of anticipatory bail. It has

been further contended that reasons which are assigned by learned Sessions Judge are not germane to law nor the issue of custodial interrogation has been dealt with whether it is required or not and straightway, granted anticipatory bail. Mr. Thakore has further submitted that while passing impugned order, proper reasons have also not been assigned and without much discussion, straightway, protection has been extended, which circumstance is sufficient enough to cancel anticipatory bail, which has been granted. Mr. Thakore has then candidly submitted that this order which is sought to be cancelled is of September 2017 and in between trial has commenced and as such, has left to the discretion of the Court without much resistance thereafter.

**7.** As against this, learned advocate Mr. B.S. Khatana appearing on behalf of respondent No.2 has contended that application may not be entertained at this stage in view of the fact that during passage of time, trial has already begun and further while passing the order, detailed circumstance has been examined by the Court below and as such, it is not reflecting that any irregularity has taken place or committed by learned Court below while exercising the discretion. In fact, well reasoned order is passed by imposing appropriate conditions which can protect interest of both the sides and therefore, when this be so, there is hardly any reason to cancel the anticipatory bail which has been granted way back in September 2017.

**8.** Learned advocate Mr. Khanata has further submitted that the main case is now put up for trial and it is not the case of prosecution that respondent accused is not cooperating with process of trial and it is also not the case either of applicant or of State authority that respondent has violated any of the conditions which are imposed while granted anticipatory bail. No such eventuality has taken place and State authority has also chosen not to file any application for

cancellation of anticipatory bail. Further, it has been submitted that even at the relevant point of time, age of the victim was 19 years and there is enough material on record to justify at least by respondent that there is no force administered as alleged in the complaint. However, be that as it may, the only issue as to whether at this stage, anticipatory bail which has been granted may be quashed or not, for which no case is made out by the applicant. Hence, under the circumstances, application being devoid of merit, deserves to be dismissed.

**9.** In addition to it, learned advocate Mr. Khanata has submitted that respondent No.2 assures that he will continue to abide by the conditions which have been imposed upon him in addition to cooperate with trial, which is going on, hence, no relief be granted.

**10.** Having heard learned advocates appearing for the parties and having gone through the material on record, it appears that complaint has well been examined by learned Sessions Judge at the time when anticipatory bail has been granted way back in September 2017. Against this grant of anticipatory bail application, State authority has not preferred any application for cancellation nor it is case of State or present applicant also that any condition is violated and as such, when conditions upon which liberty is granted or protection is granted is not misused as is visible from the stand of the either side, when that be so, anticipatory bail which has been granted way back in September 2017, no special circumstances are placed before the Court to set aside the same.

**11.** Yet, another circumstance which is also not possible to be ignored is that at the relevant point of time, age of victim was stated to be of 19 years and further, fact that trial has already begun to adjudicate the main case and therefore, when that be so, there is

hardly any justifiable reason for this Court to set aside the order which has been passed way back in September 2017.

**12.** At this stage, learned advocate for the applicant has placed reliance upon the recent decision delivered by the Hon'ble Apex Court in the case of Jayaben Vs. Tejas Kanubhai Zala and Another reported in 2022(1) Crimes 207 (SC) as well as in the case of Brijmani Devi Vs. Pappu Kumar and Another reported in 2022(1) Crimes 38 (SC) and based upon such, an attempt is made to see that present application be entertained. However, examining the case on hand and the circumstances which are placed before the Court, if compare to the facts and circumstances of the said case, it appears that same stands on a different footing. No-doubt, such authoritative and salutary principles are bound to be observed as part of judicial discipline, but here, the ratio is not possible to be applied in a mechanical form by ignoring the facts of the case as is visible from the case on hand, and as such, the Court is of the considered opinion that no supervening circumstance nor any distinguishable circumstances are placed before the Court which may warrant the Court to exercise discretion for cancellation of bail. As has been held by catena of decisions, cancellation of bail and grant of bail are two different issues, which deserve to be dealt with in proper background of facts. Here, when we see the record of the case, on page 25, there is a statement culled out in which 19 years old victim has stated that no-doubt, a statement was given at a relevant point of time that with her own volition, love marriage has been executed, but then since respondent accused was not doing any earning activity and not behaving properly, has taken a decision not to reside with him.

**13.** Further, a different stand appears to have been taken in the Habeas Corpus petition, which came to be disposed of on 11.8.2017 in

paragraph 3 and thereby victim was allowed to go with her parents. But, these are the circumstances to be examined during the course of trial, which trial has already begun and therefore, to cancel anticipatory bail which has been granted prior to 5 years, same is not possible to be digested, especially when no attempt is made by the applicant to seriously proceed with the present application. It appears that anticipatory bail has been granted on 25.9.2017, against which, on 6.10.2017, present application is filed and first order came to be passed on 26.12.2017 and in between, during passage of time, it is culled out that no attempt is made by the applicant to get the matter disposed of at the earliest nor has taken any serious steps to see that said order may be set aside and therefore, after waiting for a period of 5 years and now to take a stand that seriousness of offence has not been considered by the Court below, especially when trial has already begun, the Court is not inclined to encourage such stand of the applicant, more particularly when undisputedly, present respondent accused has not misused his liberty nor violated any condition and there is long lapse of time passed on. As such, in this peculiar background of facts, the Court is unable to exercise discretion. At this stage, Hon'ble Apex Court in the case of **X. v State of Telangana & Anr.**, reported in **(2018) 16 SCC 511**, has propounded the principle on cancellation of bail which the Court deems fit to refer hereunder:-

*"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."

**14.** Accordingly, present application being devoid of merit, stands **DISMISSED**. Rule is discharged.

OMKAR

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