

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 1640 of 2020**

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HARDIK BHARATBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR. RAFIK LOKHANDWALA(5590) for the Applicant(s) No. 1

MR. MITESH AMIN, PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SANDEEP N. BHATT**Date : 16/10/2023****ORAL ORDER**

1.1 Rule returnable forthwith. Learned PP waives service of notice of Rule on behalf of respondent – State of Gujarat.

1.2 The present petition is filed for seeking the following reliefs:

“6A. Your Lordships be pleased to admit and allow this petition in the interest of justice.

B. Your Lordships be pleased to quash and set aside the order dated 7.2.2020 passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Ahmedabad in Sessions Case No. 55 of 2016

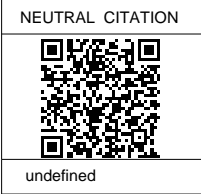


and further be pleased to quash and set aside the non bailable warrant issued against the petitioner below Exhibit 245 in Sessions Case No. 55 of 2016, in the interest of Justice.

C. Pending admission, hearing and/or final disposal of this petition, Your Lordships be pleased to stay the execution, implementation and operation of the order dated 7.2.2020 passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Ahmedabad in Sessions Case No. 55 of 2016 issuing non bailable warrant against the present petitioner below Exhibit 245 in Sessions Case No. 55 of 2016, in the interest of Justice.

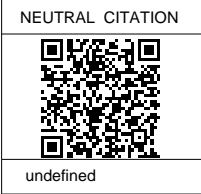
D. Your Lordships be pleased to pass such other and further orders, as this Honourable Court may deem fit and proper in the facts and circumstances of the case of the petitioner, in the interest of the justice.”

2. Brief facts as per the case of the petitioner in this petition are as such that the petitioner has been arraigned as the accused in connection with the offence being First C.R. No. 90/2015 dated 21.10.2015 under sections 121A, 124A, 120B of the Indian Penal Code registered with DCB Police Station, Ahmedabad. The



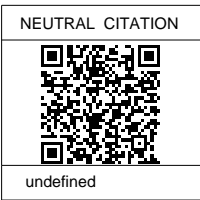
Investigating Officer had arrested the petitioner on 23.10.2015, subsequently the chargesheet came to be filed with respect to the above offence, which has also culminated into the Sessions Case No. 55/2016. The petitioner was released on regular bail by the Hon'ble Gujarat High Court with respect to the above offence vide order dated 8.7.2016 in Criminal Misc. Application No. 6440 of 2016. It is further the case of the petitioner in this petition that the petitioner had to go to Viramgam to attend one social function and therefore, he had instructed his lawyer to file Exemption Application in Sessions Case No. 55 of 2016 before the Hon'ble City Civil and Sessions Court, Ahmedabad. The learned trial Judge rejected the Exemption Application filed on behalf of the petitioner and issued nonailable warrant against him and on the very day i.e. 18.1.2020, the petitioner came to be arrested from Hansalpur Cross Road, Near Viramgam and was sent to judicial custody.

It is further the case of the petitioner in this petition that the petitioner therefore filed Criminal Misc. Application No. 381 of 2020 for releasing on regular bail before the learned City Civil and Sessions Court,



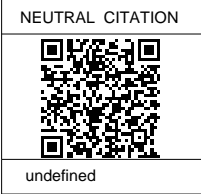
Ahmedabad. The petitioner also filed an undertaking before the Hon'ble City Civil and Sessions Court. The learned City Civil and Sessions Court was pleased to allow the application filed by the petitioner and granted regular bail to the petitioner. The petitioner after being released on regular bail in the above offence came to be arrested by Mansa Police Station with respect to the offence registered against him under section 188 of the Indian Penal Code with Mansa Police Station. The petitioner therefore on 24.1.2020 filed exemption application before the City Civil and Sessions Court for exempting his absence on account of his inability to remain present before the learned Sessions Judge, City Civil and Sessions Court, Ahmedabad since he was in the custody of Mansa Police. The said Exemption Application came to be allowed by the learned trial Judge.

It is further the case of the petitioner in this petition that since the prosecution witness (PW 1 - Vijay Badheka) was present before the trial court on 24.1.2020, the counsel for the petitioner cross examined him. The accused Nos. 2 and 3 filed the adjournment application



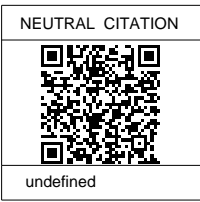
on 24.1.2020 which came to be allowed by the learned Additional Sessions Judge, City Civil and Sessions Court, Ahmedabad. Thereafter the case was adjourned to 1.2.2020 for cross examination of the said witness by the accused Nos. 2 and 3.

It is further the case of the petitioner in this petition that the petitioner was apprehending his arrest in connection with the offence being C. R. No. 1-164/2015 dated 26.8.2015 under sections 143, 147, 332, 427 of the Indian Penal Code registered against him with Vastrapur Police Station and therefore the petitioner filed Anticipatory Bail application vide Criminal Miscellaneous Application No. 560 of 2020 before the Hon'ble City Civil and Sessions Court, Ahmedabad which came to be rejected. The petitioner being aggrieved by the above order challenged the said order before the Hon'ble Gujarat High Court vide Criminal Miscellaneous Application No. 2607 of 2020. It is further the case of the petitioner in this petition that since the petitioner was availing the alternate remedy available to him and since he was apprehending his arrest by the Police in connection with the offence being C.R. No. 1-164 of 2015

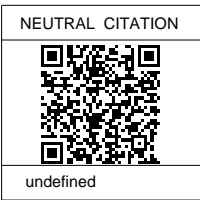


registered with Vastrapur Police Station, Ahmedabad and therefore on 1.2.2020, the petitioner filed exemption application before the Hon'ble City Civil and Sessions Court to exempt his absence on account of his genuine apprehension of being arrested in connection with the above offence and pending bail application before the Hon'ble Gujarat High Court. It is further the case of the petitioner in this petition that the counsel for the petitioner stated in the said exemption application also that the court may proceed with the matter even in the absence of the petitioner. The said Exemption Application came to be allowed by the learned Additional Sessions Judge, City Civil and Sessions Court, Ahmedabad.

It is further the case of the petitioner in this petition that it is also pertinent to note that the petitioner had already cross examined the Prosecution Witness on 24.1.2020 and there was no stage for him to cross examine the witness present before the court, on the other hand, the accused nos. 2 and 3 had sought time on 24.1.2020 to cross examine the witness (PW 1 - Vijay Badhkea). It is further the case of the petitioner in this petition that the accused No. 2 again sought time

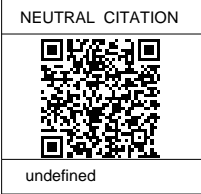


to cross examine the witness (PW 1 - Vijay Badhkea) and filed adjournment application on 1.2.2020 and the accused no. 2 and 3 did not cross examine the witness present before the court on 1.2.2020 also. It is further the case of the petitioner in this petition that the learned Additional Sessions Judge, City Civil and Sessions Court, Ahmedabad was pleased to grant adjournment sought by the accused no. 2 and adjourned the matter to 7.2.2020. It is further the case of the petitioner in this petition that the Hon'ble Gujarat High Court issued notice to the State in connection with the offence being C.R. No 164/2015 registered with Vastrapur Police Station in Criminal Misc. Application No. 2607 of 2020 and kept the matter on 12.2 2020. It is further the case of the petitioner in this petition that it is submitted that therefore on 7.2.2020 the petitioner could not remain present before the Hon'ble City Civil and Session Court in Sessions Case No. 55 of 2016 under genuine apprehension of his arrest by police in connection with the offence being C. R. No. 1-164/2015 registered with Vastrapur Police Station since his anticipatory bail was pending before the Hon'ble Gujarat High Court.



It is further the case of the petitioner in this petition that the counsel for the petitioner therefore filed the exemption application before the learned Additional Sessions Judge, City Civil and Sessions Court, Ahmedabad in Sessions Case No. 55 of 2016 seeking exemption to remain present before the court under the apprehension of his arrest by police in connection with the offence being C. R. No. 1-164/2015 registered with Vastrapur Police Station. It is further the case of the petitioner in this petition that the counsel for the petitioner specifically requested the court in the exemption application to proceed with the matter even in the absence of the petitioner and the learned Additional Sessions Judge, City Civil and Sessions Court, Ahmedabad rejected the exemption application dated 7.2.2020 filed on behalf of the petitioner and issued non bailable warrant against the petitioner, which has been challenged by the petitioner in the present petition.

It is further the case of the petitioner in this petition that it is also pertinent to note that there was no stage of the petitioner on 7.2.2020 to conduct cross



examination of the witness present before the court (PW 1 Vijay Badheka) as the counsel for the petitioner had already cross examined the said witness on 24.1.2020. It is required to be pertinently noted that the accused no. 2 and 3 had not cross examined the said witness on earlier dates also and the witness has kept visiting the court for his cross examination to be conducted by the counsels of accused no. 2 and 3. It is submitted that on 7.2.2020 also, the witness (PW 1 Vijay Badheka) was present before the court for his cross examination to be conducted by the accused no. 2 and 3, but the accused no. 2 and 3 did not cross examine the said witness on 7.2.2020 also.

It is further the case of the petitioner in this petition that on the other hand, the petitioner who had already cross examined the said witness and who being apprehending his arrest could not remain present before the court, and therefore he had filed exemption application on 7.2.2020 and the counsel for the petitioner specifically requested the court in the exemption application to proceed with the matter even in the absence of the petitioner, but erroneously the learned



trial Judge, rejected his exemption application. It is further the case of the petitioner in this petition that the Hon'ble Gujarat High Court rejected the anticipatory bail application (Criminal Misc. Application No. 2607 of 2020) filed by the petitioner in connection with the offence being C. R. No. 1-164/2015 registered with Vastrapur Police Station on 17.2.2020. It is further the case of the petitioner in this petition that the petitioner has also challenged the above order before the Hon'ble Supreme Court of India vide Special Leave Petition (Crl) No. 1719/2020, wherein the Hon'ble Supreme Court was pleased to direct the Police to not arrest the petitioner till next date of hearing i.e. 6.3.2020 in connection with the offence being C. R. No. 1164/2015 registered with Vastrapur Police Station for the offence punishable under sections 143, 147, 332, 447 of the Indian Penal Code.

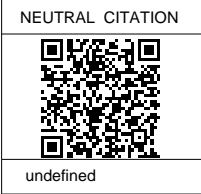
Hence, the present petition is preferred.

3. Heard the learned counsel, Mr. Rafik Lokhandwala, for the petitioner, and Mr. Mitesh Amin, the learned Public Prosecutor (PP), for the respondent – State.



4. When the matter is called out, the learned counsel, Mr. Rafik Lokhandwala, for the petitioner has submitted that considering the averments made in the present petition, considering the fact that now the Hon'ble Apex Court is considering the validity of Section 124A of the I.P.C. and in light of the order passed in the case of **S.G. Vombatkere versus Union of India** rendered in writ petition No.682 of 2021, along with considering the direction given by the Hon'ble Apex Court, appropriate order may be passed by quashing and setting aside the impugned order.

5. Conversely, Mr. Mitesh Amin, the learned Public Prosecutor (PP) for the respondent – State, acknowledged that he does not dispute the fact that proceedings are presently pending before the Hon'ble Apex Court. He further submitted that, considering this fact, the prayers presented in the present petition can be granted at this stage. Essentially, the petitioner seeks the setting aside of the non-bailable warrant issued under Exh.245 in Sessions Case No. 55 of 2016, and, in the interest of justice, an appropriate order may be passed.



6. In light of the conflicting arguments presented in court, without delving into the other merits of the case, it is notable that both parties agree that the impugned order can be set aside. Considering the fact that the matter concerning the validity of these sections is currently under review by the Hon'ble Apex Court, and taking into account the nature of the prayers put forth in the present petition, it is appropriate to grant the present petition by exercising the powers vested under paragraph 6(B) of the present petition. The order dated 7.2.2020, passed below Exh.245 in Sessions Case No. 55 of 2016 by the learned Additional Sessions Judge, City Civil and Sessions Court, Ahmedabad is quashed and set aside.

7. Consequently, the present application is allowed to the extent described above. Rule is made absolute.

DIWAKAR SHUKLA

(SANDEEP N. BHATT,J)