

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 13094 of 2020

MANSUKHBHAI POLABHAI DHADUK

Versus

STATE OF GUJARAT

Appearance:

MR ASHISH M DAGLI(2203) for the Applicant(s) No. 1,2

MR JAY V AJMERA(10517) for the Respondent(s) No. 1

MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**

Date : 05/10/2020

ORAL ORDER

Pursuant to the order dated 24.09.2020, the advocate Mr.Ajmera has deposited Rs.10,000/- before the Registry of this Court. He has appeared today through video conferencing and tendered unconditional apology and has further stated that he would not ever repeat the act again.

The Registrar, Judicial has also tendered his exhaustive Report dated 04.10.2020. I have perused the same. The Report is forwarded to the Bar Council of Gujarat and the Bar Association of High Court of Gujarat for perusal. I may with also incorporate few observations of the Supreme Court for the constructive consumption of both the governing bodies. The Supreme Court in the case of In Re Vs Vinay Chandra Mishra, reported in 1995(2)SCC 584 has observed thus:

"A lawyer has to be a gentleman first. His most valuable asset is the respect and goodwill he enjoys among his colleagues and in the Court."

In the case of R.D.Saxena vs Balram Prasad Sharma, 2000 (7) S.C.C. 264 has observed thus:

While dealing with the money or any other article or document entrusted, an advocate is expected to always keep in mind the high standards of profession and its values adopted and practiced for centuries. 'Professional obligations' of a lawyer are

distinguished from the 'business commitments' followed by trading community. The legal profession owes social obligations to the society in discharge of the profession services to the litigants. The Bar Council of India Rules say that :

"An advocate shall, if at all times, compose himself in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar or for a member of the Bar in his non-professional capacity may still be improper for an advocate."

In the case of Devendra BhaiShanker Mehta vs Union of India, 1993 (1) G. L. H. 36 has observed thus:

"To say the least, an advocate enrolled under the Advocate Act, 1961, having a license to represent, the case of litigants is expected to maintain a high standard of morality and unimpeachable sense of legal and ethical propriety."

Though, I cannot direct both the esteemed organizations to undertake necessary colloquium for its members, but I hope that the afore-noted observations of the Apex Court are conveyed so that such inopportune and regrettable incidents can be avoided. The Apex Court has addressed the lawyer as a gentleman, who has to maintain high standards of morality and unimpeachable sense of legal and ethical propriety.

With the aforementioned observations, this Court closes the undesirable chapter with a hope that such incident should not occur in future. It is further clarified that forwarding of the Report of the Registrar, Judicial and the observations of this Court shall not be in any manner be construed adverse against the advocate Mr.Ajmera. His apology is accepted by this Court with no hard feelings or malice. I only advise him to be mindful of the observations of the Apex Court since he has yet to tread a long professional path.

1. Heard the learned advocates for the respective parties through video conferencing.
2. This application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 for regular bail in connection with FIR registered as C.R.No.11193053200692 of 2020 with Savarkundla Rural Police Station, District Amreli for the offences punishable under Sections 406, 409, 420, 465, 467, 471, 120B and 34 of the Indian Penal Code, 1860.
4. Learned advocate for the applicant has submitted that the allegations made against the applicant are vague and he has been falsely implicated in the alleged offence. He has further submitted that the applicant has been arrested on 18.08.2020 and have been incarcerated since then. He has submitted that the entire case is based on documentary evidence, those documents are already collected. He has submitted that the FIR has been filed at a belated stage after 5 years of the alleged incident and there is no satisfactory explanation given for the delay caused in filing the FIR. Learned advocate has also submitted that the applicant has no antecedent.
5. On the other hand, the learned Additional Public Prosecutor appearing for the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.
6. Learned Advocates appearing on behalf of the respective parties do not press for a further reasoned order.

7. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers. Following aspects are considered :-

- i) The applicant is in custody since 18.08.2020;
- ii) The investigation is going on and charge-sheet is not filled;
- iii) there appears to be delay in lodging the FIR since it appears that the complainant was already aware of the transaction and a notice dated 01.11.2018 was also issued by the ICICI Bank;
- iv) *Prima facie* no criminal antecedents against the applicants are pointed out;

This Court has taken into consideration the law laid down by the Apex Court in the case of **Sanjay Chandra v. Central Bureau of Investigation**, [2012] 1 SCC 40.

7. Having regard to the above submissions and in the facts and circumstances of the case and considering the nature and gravity of accusation made against the applicants in the FIR, this Court is of the view that discretion is required to be exercised in favour of the applicants for grant of bail. Moreover, the applicants assure that they will abide by the terms and conditions that may be imposed by the Court and shall not commit any breach.

8. Further I do not intend to go into the merits of the matters and I am persuaded to exercise my discretion in favour of the applicants. The investigation is going on and the charge-sheet is not filed and the trial would take a considerable long period of time.

9. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with C.R.No.11193053200692 of 2020 with Savarkundla Rural Police Station, District Amreli on executing personal bond of Rs.10,000/- (Ten Thousand) each with two surety of like amount to the satisfaction of the trial Court and subject to the conditions that they shall;

- (a) not take undue advantage of liberty or misuse liberty;
- (b) not act in a manner injurious to the interest of the prosecution & shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;
- (c) surrender passport(s), if any, to the Trial Court within a week;
- (d) not leave the State of Gujarat without prior permission of the Trial Court concerned;
- (e) mark presence before the concerned Police Station once in a month for a period of six months between 11.00 a.m. and 2.00 p.m.;
- (f) furnish the present addresses of their 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 Trial Court;

10. The authorities will release the applicants only if they are 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.

11. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

12. At the trial, the trial Court shall not be influenced by the observations of preliminary nature qua the evidence at this stage made by this Court while enlarging the applicant on bail.

13. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent.

14. Registry is directed to intimate the concerned jail authority and the concerned Sessions Court about the present order by sending a copy of this order through Fax message, email and/or any other suitable electronic mode.

15. Learned advocate for the applicant is also permitted to send a copy of this order to the concerned jail authority and the concerned Sessions Court through Fax message, email and/or any other suitable electronic mode.

Sd/-
(A. S. SUPEHIA, J)

NEHA /// ABHISHEK

WEB COPY