

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 1316 of 2023**

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SAKET SUHAS GOKHALE

Versus

STATE OF GUJARAT

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Appearance:

MR. ASIM PANDYA, SENIOR COUNSEL WITH
MR.JAY S SHAH(7244) for the Applicant(s) No. 1
MR. L.B.DABHI, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 23/01/2023**ORAL ORDER**

(1) Rule. Learned App waives service of notice of Rule for and on behalf of Respondent-State.

(2) This application is filed under Section 439 of the Code of Criminal Procedure for regular bail in connection with F.I.R. registered as C.R.No.11191067220154 of 2022 with Cyber Crime Police Station, Ahmedabad City for the offences punishable under Sections 406, 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code read with sections 66(c) and 66(d) of the Information Technology Act.

(3) The brief facts of the present case are as under:

3.1 The applicant is a well-known RTI activist, Social Activist and former journalist and has received education from various prestigious institutions such as the Wilson College, Mumbai, Trinity College London and Prague School, Czech

Republic. He has also worked with prestigious media house before joining the ruling party of the State of West Bengal as its national spokesperson. The applicant is a chronic cardiac patient with 30% of left ventricular ejection fraction and has been constantly harassed by the Police Officials, wherein, he is being maliciously arrested in one or other other FIR and deliberately made to travel by road from Delhi/Jaipur to Ahmedabad within same day, thereby, leading to the deterioration of his physical health. The applicant is a victim of political vendetta due to his social media post on "Twitter" relating to a political party. The applicant has been victimized and unjustly arrested in one after another FIR registered by the State Police, wherein the allegations are cyclostyled.

3.2 On 01.12.2022 at 8:29 am, the petitioner had shared a news clipping about the information purportedly obtained through the Right to Information, claiming that Prime Minister's visit to Morbi after the bridge collapse had costed Rs.30 Crore, which turned out to be the beginning of a planned political vendetta against the applicant.

3.3. Immediately, after the tweet one Mr. Amit Kothari, Senior Functionary of a National Political Party lodged an FIR at Cyber Crime Police Station at Ahmedabad City against the applicant. On 06.12.2022, the applicant was arrested by the Gujarat Police upon

his arrival at Jaipur, Rajasthan from New Delhi.

3.4 Applicant was mentally tortured by Gujarat Police during his police custody from 06.12.2022 till 08.12.2022. However, on 08.12.2022, the Additional Chief Judicial Magistrate, Ahmedabad was pleased to release the applicant on bail with certain conditions, inter alia, directing the applicant to deposit his passport which was duly deposited on 09.12.2022. However, immediately after being released on bail on 08.12.2022, the applicant was illegally detained by Cyber Cell, Ahmedabad and taken to Morbi by road without any notice or formal arrest. Thereafter, the applicant was arrested at Morbi on 09.12.2022 in connection to another FIR registered at B Division Morbi Division Police Station under Section 125 of the Representation of People act, 1950. However, the Magistrate Morbi was pleased to release the applicant on bail on personal bond. Thereafter, applicant was never violated any conditions imposed by Magistrate, whatsoever. The applicant informed the Investigating Authorities via email that he will appear before them on 03.01.2023 to assist with the investigation.

3.5 On 28.12.2022, one Mr. Anand Nagindas Bihola, Deputy Secretary, Government of Gujarat, on behalf of his wife lodged another FIR at Cyber Crime Police Station, Ahmedabad City under the provisions of Information Technology Act. Pursuant to the said FIR,

the applicant was arrested on 29.12.2022. An application for bail came to be rejected firstly by Additional Chief Metropolitan Magistrate, Court No. 11, Ahmedabad and second by Sessions Court, Ahmedabad. Being aggrieved by both orders, the applicant has preferred the present application.

(4) Heard Senior Counsel Mr. Pandya appearing for the appellant and learned Additional Public Prosecutor appearing for the respondent-State.

(5) Mr. Pandya submits that the complainant has filed the present FIR only with a view to ensure that the present applicant is arrested and persecuted with malafide and oblique motives. Mr. Pandya submits Sessions Judge, failed to consider that there is no misappropriation in the present case, which itself, prima facie ingredient to attract the offence of cheating. Mr. Pandya submits that the FIR is solely based on conjecture, sunrises, half-backed information and information deduced from the internet, which is not ascertained or verified by anyone and the applicant is arrested based on the same. Mr. Pandya, further submits that FIR incorrectly mentions that the complainant's wife has contributed Rs.500/- on a "RazorPay" link mentioned by the applicant on a social media post (twitter) which was active during January 2021 till November, 2021 but the fact is that all credentials of the applicants are still available on the said social

media portal but no complaints have come up in this regard for the complainant. Mr. Pandya submits that said funds collected through crowd funding were solely via online payment which has been duly accounted and appropriate tax is also paid on the said amount by the petitioner, which is reflected in his tax returns. Mr. Pandya, further submits that the complainant's wife was fully aware that her donation was supposed to be used by the petitioner to sustain himself. Therefore, the complainant's allegation about the amount being used for personal purposes instead of the purpose for which it was obtained cannot be acknowledged for the reason that since inception it was made crystal clear that the amount which is being paid by the complainant and other witness is for the personal substances of the applicant. In support of his application, he has relied upon the judgment of the Sanjay Chandra v. CBI, (2021) 1 SCC 40, wherein it has been categorically held that in bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed

to be innocent until duly tried and duly found guilty. Mr.Pandya further submits that petitioner has already been remanded to judicial custody and no fruitful purpose will be served by keeping him behind bars, and therefore, the present application deserves to be allowed and the applicant may be enlarged on bail under the provisions of Section 439 of the Code.

(6) Learned APP appearing for Respondent-State submits that the applicant accused is involved in very serious crime and he does not deserve the bail that there is all likelihood that the presence of accused may not be secured and the applicant-accused likely to tamper with the evidence. He therefore prayed that looking to the gravity of the offence present applicant may not be enlarged on bail.

(7) From police report as well as statement of witnesses and affidavit filed by the Investigating Officer, it appears that there are serious allegations against the applicant. The Investigation is going on and the charge-sheet is yet to be filed. From the statement of the complainant and other witness, it appears that funding raised for welfare of the people were utilized by the applicant for his personal expenses. As per the statement of witness of witnesses, the applicant has not only received amount from the wife of the complainant, but received amount from the people from around 1767 persons and collecting funding using the social media or rather

website received the payment by using online payment gateways. There are many transactions appears to have been done on *prima-facie* going through the bank account statement, so it cannot be denied that some transactions might be done for his personal usage or not, which is a question of fact and can only be decided by evidence at the time of trial and not at the stage of investigation when the charge sheet is yet to be filed. Further, the case being of the nature of fraud and cheating and keeping view that the investigation is still going on and the necessary evidences are to be recovered.

(8) It is also beneficial to refer to judgment of the Hon'ble Supreme Court in case of **The State of Kerala vs. Mahesh**, wherein the Hon'ble Supreme Court in para No.17 has observed as under:

17. In **Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496**, the Supreme Court laid down the parameters for granting or refusing the grant of bail which are as under:-

i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

ii. nature and gravity of the accusation;

iii. severity of the punishment in the event of conviction;

iv. Danger of the accused absconding or fleeing, if released on bail;

v. character, behavior, means, position and standing of the accused; i. Likelihood of the

offence being repeated;

vii. Reasonable apprehension of the witnesses being influenced; and

viii. Danger, of course, of justice being thwarted by grant of bail."

(9) For the foregoing reasons and from the facts and circumstances of the case, it appears that the prosecution has clearly established the prima facie case against the present applicant and thus, this Court is not inclined to exercise the powers vested under section 439 of Code of Criminal Procedure Code for releasing the present applicant on bail.

(10) Accordingly, present application stands rejected. Rule is discharged.

VISHAL MISHRA

(SAMIR J. DAVE,J)

