



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 7648 of 2023**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SAMIR J. DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

SANJIV RAJENDRABHAI BHATT

Versus

STATE OF GUJARAT

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Appearance:

SENIOR ADVOCATE MR MIHIR JOSHI with VISHAL K ANANDJIWALA (7798) for the Applicant(s) No. 1

MR YASH K DAVE(10269) for the Applicant(s) No. 1

MR HR PRAJAPATI(674) for the Original Complainant

MR MITESH AMIN, PUBLIC PROSECUTOR with MR J K SHAH, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SAMIR J. DAVE

**Date : 24/08/2023
CAV JUDGMENT**

Rule. Learned advocates appearing for the respective respondents waive service of notice of Rule.

1. By way of the present petition filed under Article 227 of the Constitution of India read with Section 482 CrPC this Court is called upon to decide the challenge made by the petitioner to an interlocutory order dated 13.06.2023 passed by the presiding judge



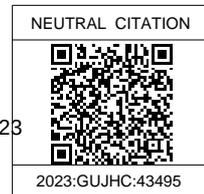
i.e. 3rd Additional Sessions Judge & Special Judge (N.D.P.S. Act, B. K. District) in Special (N.D.P.S.) Case No. 3 of 2018 below Exh.728, Exh.731 and Exh.738 during an on going trial. For ready reference the prayers made in the instant petition are extracted below:-

“a. that the Hon’ble Court be pleased to quash and set aside the orders dated 13/06/2023 passed below Exh.728, Exh.731 and Exh.738 passed by the by the learned 3rd Addl. Session Judge, Banaskantha at Palanpur as they are illegal, erroneous and perverse and further be pleased to restore the same and direct the same to be heard afresh after appropriate opportunity of hearing to the petitioner;

b. that pending the hearing and final disposal of the petition, the Hon'ble Court be pleased to stay further proceedings in respect of Special NDPS Case No.3/2018;

c. that the affidavit may kindly be dispensed with as the petitioner is in judicial custody;”

2. The petitioner has placed all these three applications and order passed below it, on the record of this case. A perusal of the said applications made vide Exh.728, Exh.731 and Exh.738, reveals, that except Exh 728, all the other applications, made by the petitioner are in nature of applications either seeking modification, review and/or setting aside of the earlier orders passed by the presiding judge during the course of the trial. In Exh. 731, modification of remarks made earlier by the special judge vide his order dated 26.04.2023 passed below Exh.722 is sought. In Exh.738 prayer is made to virtually set aside the order passed below Exh.723 by the same court on the ground of alleged procedural irregularity.



3. Before proceeding further, it may be noted that this court vide a separate detailed judgement pronounced today in Special Criminal Application 7646 of 2023 has with reasons, rejected irresponsible and scandalous allegations of bias and malice levelled by the petitioner against the presiding judge conducting the trial. In the said Special Criminal Application, the petitioner had challenged the order dated 08.06.2023 passed by the Principal District and Sessions Judge, Banaskantha at Palanpur in Criminal Misc. Application No. 299 of 2023, seeking transfer of Sessions Case No.3 of 2018 from the court of presiding judge to the Court of Senior most Additional Sessions Judge, Banskantha at Palanpur virtually at the fag end of the trial. The issue of whether the rejection of petitioner's applications made vide Exh.728, Exh.731 and Exh.738 was due to malice or bias harbored by the presiding judge is also considered therein as they were cited as instances for seeking the transfer of the present trial from the presiding judge to any other judge, preferably the senior most Add. Session judge.

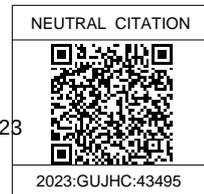
4. Vide the said judgment rendered in Special Criminal Application 7646 of 2023, this court after noting the chequered history of the present case; various orders and strictures passed by this court as well as the Hon'ble Supreme Court against the petitioner and after noting the habitual conduct of petitioner-accused in abusing the procedure prescribed in law, has come to the conclusion that these applications have been preferred by the



accused at the fag end of the trial to somehow protract and delay the conclusion of the same. This court has further observed that the transfer petition preferred by the accused before the Principal District and Session Judge under section 408 CrPC seeking transfer of the present trial from 3rd Additional Sessions Judge & Special Judge (N.D.P.S. Act, B. K. District) in Special (N.D.P.S.) Case No. 3 of 2018 to any other judge, despite there being successive orders of this court confirmed twice by the Hon'ble Supreme Court, directing the trial to be concluded by 30.07.2023 (the date which has expired during the pendency of these Special Criminal Applications), is nothing but last effort on the part of the petitioner-accused to see that the trial does not conclude in prescribed time.

5. Accordingly, this court vide its judgment of even date pronounced in Special Criminal Application 7646 of 2023, while deprecating the conduct of the petitioner, has directed the presiding judge to conclude the trial within the time frame, repeatedly decided by two Hon'ble Coordinate Benches of this Court and not to delay the case any more in any manner whatsoever and not to entertain any unnecessary applications filed by any party delaying the decision of the case.

6. Since the interlocutory order dated 13.06.2023 passed by the presiding judge below Exh.728, Exh.731 and Exh.738, was not under challenge in Special Criminal Application 7646 of 2023, therefore, by way of the present Special Criminal Application the

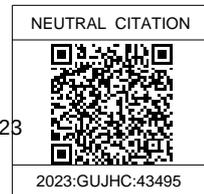


petitioner has invoked the inherent jurisdiction of this court seeking to challenge the said order, as revision against the said interlocutory order would not have lied.

7. This court is therefore of the view that the allegations made in the present petition are thus required to be decided in view of the findings already recorded by this court in the judgment and order rendered in Special Criminal Application 7646 of 2023, which were heard together.

8. Briefly, stated the case of the petitioner is that as per the orders passed by this Court the trial in the matter was to be conducted on day-to-day basis. However, on the pretext of concluding the trial within the time prescribed by this court the presiding judge was rejecting the applications preferred by the petitioner-accused without considering the same on merits or providing him a fair opportunity of hearing. The irresponsible allegations of bias and malice are once again agitated in this petition to challenge the order dated 13.06.2023 passed by the presiding judge below Exh.728, Exh.731 and Exh.738.

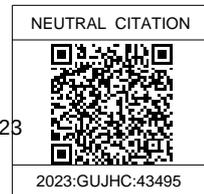
9. The petitioner has submitted that when the stage of leading evidence was closed, the petitioner moved an application seeking accommodation on the ground of sickness of the advocate. It is the case of the petitioner that the said application came to be rejected on 27.4.2023 and the special court directed the prosecution to start it



final arguments. It is the case of the petitioner that the said arguments took place only for 5-10 minutes. It is the case of the petitioner that aggrieved by the said order dated 27.04.2023, the petitioner on 28.04.2023 moved an application at Exh.728 praying that the audio-video recording of the trial proceedings conducted through Zoom Meeting app. be provided to the petitioner-accused. The purpose behind by the petitioner for praying for audio-video recording of the trial proceedings was that the petitioner wanted to adduce the same as an evidence before this court in respect of the alleged bias manner in which the presiding judge and the two Sp. Public Prosecutor were conducting the trial in connivance with each other and were making all attempts to deny the petitioner-accused the opportunity of fair trial in the matter.

10. It is the case of the petitioner that on 28.04.2023 the hearing of the said application below Exh. 728 was deferred and on 13.06.2023, the Special Judge, without affording a fair opportunity of hearing to the parties rejected the application preferred below Exh.728 observing that similarly situated issues were raised in the Transfer Petition being CrMA 229/2023, and the said application for transfer has been rejected by the learned Principal District Judge, Banaskantha at Palanpur.

11. The next ground of challenge raised in the present petition is rejection of petitioner's application made under Exh. 731, whereby, the Advocate for the petitioner prayed for modification of remarks

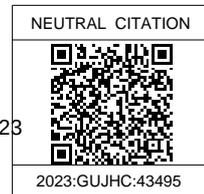


made in the order dated 26.04.2023 passed below Exh.722. Vide the said order the presiding judge had recorded that the advocate for the petitioner has no objection if the argument of the prosecution starts. It is contended by the petitioner that this was a factual error committed by the court.

12. It is submitted by the petitioner that the order made by the learned Special Judge on petitioner's application made vide Exh.738. A prayer was also made that the order passed below Exh.723 was procedurally irregular, judicially improper and bad in law and therefore liable to be rescinded and to be declared void ab initio. The petitioner also prayed that all the consequential ex-post facto proceedings conducted pursuant to the order passed below Exh. 723 be struck off from the record of Special NDPS case.

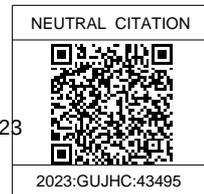
13. Against the above contention raised by the petitioner, respondent State has filed an affidavit in reply and along with the said affidavit in reply, the respondent State has also placed Exh.729 which is their reply dated 01.05.2023 to the petitioner's application made vide Exh.728. The respondent State has also placed Exh.736 which is their reply dated 03.05.2023 to petitioner's application made vide Exh.731 and Exh.753 which is petitioner's application dated 01.05.2023 initially decided on 01.06.2023 and finally decided on 13.06.2023.

14. This court has heard the parties at length and has perused the record of the case as produced by the state. Before examining the



rival contentions, this court finds it relevant to note that it is not exercising revisional or appellate jurisdiction over the impugned order passed by the Special Judge. What is invoked is the supervisory jurisdiction vested in this court under Article 227 of the Constitution of India and the inherent jurisdiction vested in this court under Section 482 of CrPC. Both the aforesaid provisions impose an inherent restriction on this court to exercise its supervisory, as well as, its inherent powers, sparingly and cautiously and entertain only such petitions where this court comes to a definite conclusion that order passed by court below is passed in clear, express and apparent ignorance or utter disregard of the provisions of law which has resulted in miscarriage of justice. In guise of invoking supervisory or inherent powers, this court cannot be converted into a court of appeal sitting and re-appreciating evidence and holding a merit review of the impending trial. This has been discussed in detail in the judgment passed by this court in Special Criminal Application 7646 of 2023. Thus, with these observations this court would now proceed to examine the rival contentions.

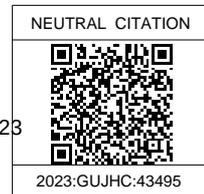
15. Though the petitioner has vehemently submitted that all these three applications i.e. Exh.728, Exh.731 and Exh.738 were decided without hearing the petitioner. However, a perusal of the said order reveals that the order impugned herein expressly records that the petitioner was heard. It has also been pointed out by the State that on the said date the petitioner was not only heard but during the hearing



he made a dire attempt to scandalize the court proceedings though his unruly conduct and by making vexatious allegations against the prosecution and the presiding judge of the court. It is the contention of the state that only because his applications were dismissed, he has taken this completely false ground that he was not heard. It is the contention of the state that the nature of application moved by the petitioner is interlocutory in nature and the prayers made therein, exhibits that the petitioner has been pressurizing the learned Presiding Judge to conduct as per the wish of the petitioner. It is the case of the respondent state that the motive and purpose of the said applications was only to protract the trial.

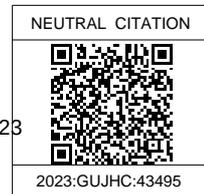
16. This court has observed that the order passed by the special judge in the instant case which clearly records that the petitioner was heard. Hence, on the basis of record of the case, this court finds no reason to believe that the presiding judge has not heard the petitioner before deciding the said applications. Further, the attention of this court has also been drawn by the respondent state at Page-17 of the paper-book, where below the order passed by the presiding judge petitioner himself has put his note/endorsement where he himself has stated that on 13.06.2023 petitioner only argued his application Exh.739 and no other applications except Exh.739.

17. Attention of this court has also been drawn by the Respondent State at Page-45 i.e. petitioner's application vide Exh.753 which came to be finally decided on 13.06.2023. A perusal of the said application shows that it contains petitioner's note/endorsement that



he has seen the order passed on 13.06.2023. This note/endorsement, his signature with date are clearly seen at Page-47 of the paper-book. Hence, this court does not find any reason to accept the petitioner's contention that he was not heard.

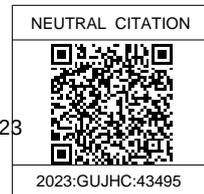
18. It has also been contended by the State that the petitioner has been exhibiting unruly behavior while attending the trial proceedings and has been intimidating both the prosecutor and the judge. It has further been submitted by the state that the petitioner, at the fag end of the trial, through his unruly conduct is making repeated attempts to scandalize the court proceedings and to destroy the atmosphere of court, so as to stall his trial or get it transferred to another court. In this background and considering the findings given by this court in Special Criminal Application 7646 of 2023, whereby, petitioner's Section 408 CrPC petition seeking transfer of the present trial to another court has been dismissed by a detailed judgment of the Principle District and Session Judge which has been confirmed by a detailed judgment of this court, I do not find any reason to disbelieve the records of the trial court which clearly states that the petitioner was heard on all the three applications made by him before the special judge. On holistic reading of the entire record, this court finds that on one hand petitioner states that except one application i.e. Exh.739 no other applications were heard on that day and at the same time petitioner himself accepted at Page-47 according to his signed note that his application Exh.753 is also decided on 13.06.2023. In view of above, this Court finds no reason to



disbelieve what learned Special judge has recorded findings in the impugned order.

19. Next, this court would consider the petitioner's application Exh.728 dated 28.04.2023, wherein prayer made related to staying of court proceedings i.e. staying of proceedings of Special NDPS Case No. 3 of 2018 till the audio-video recording of court proceeding of the present trial is preserved and made available to him. In this context the state has pointed out to this court that since petitioner's application for transfer of proceedings was rejected by the learned Principal District Judge, Banaskantha on 08.06.2023, wherein same ground was taken, there was no reason or occasions for the special judge for even considering the application for stay of the trial court proceedings, more particularly, when the learned Presiding Judge was under direction of this Court issued by two coordinate benches of this court to complete the trial within stipulated period was about to come to an end on 30.07.2023 (which has already expired during the pendency of these two petitions).

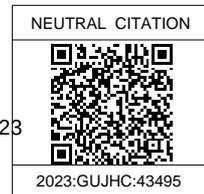
20. After, perusing the record this court finds no reason to interfere with the impugned interlocutory order on this ground. An accused certainly has a right to seek stay of his trial. But that right has to be exercised before the appellate or supervisory court. The court conducting the trial is under no obligation to stay the trial, specifically when it is mandated to conclude the trial within a time frame to stay the proceedings merely on the asking of the accused. It



is for the appellate court to stay the trial if it finds adequate grounds to pass such an order. This being the position this court does not find any illegality in the order of the learned Presiding Judge, whereby, he has refused to stay the trial in absence of any orders to the contrary from any appellate or superior court. As such, this court, exercising its inherent and supervisory jurisdiction under section 482 CrPC and Article 227 of the Constitution of India, do not find any reason to interfere with the order passed by the learned Special Judge below Exh.728.

21. The next argument raised by the petitioner is regarding his rejection of application vide Exh.731. It has been contended that the Petitioner's advocate made an application vide Exh.731 disputing order dated 26.04.2023 passed by learned Special Judge below Exh.722. The petitioner before the learned Presiding Judge had argued that the order passed below Exh.722, wherein, it is observed that his Advocate S.B.Thakor has made a statement that he would remain present and would note the submissions made during the hearing is not true and therefore, that part of the order is required to be quashed.

22. This court has perused the record and after perusing the same this court finds no reason to disbelieve observation made by the learned Special Judge, more particularly when there is no challenge made to the order passed below application Exh.722 as back as 26.04.2023. A perusal of the application Exh.722 placed on record



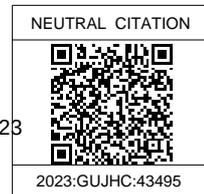
clearly shows endorsement of advocate Shri. S.B.Thakor below the order about, he having seen the order, and thereafter, the same is signed by him along with the Public Prosecutor appearing for the State. Furthermore, this court is of the opinion that there is no provision in the Code of Criminal Procedure, 1973 for deleting the order or any part of the order as the same would amount to a Criminal Court reviewing its own order.

23. At this juncture, it may also be relevant to note that this court vide order dated 6.01.2023, while granting extension, directed the presiding judge to conclude the trial by 31.03.2023. Since, due to numerous applications filed by the petitioner-accused the trial could not get over during the said period, and therefore, the presiding judge had administratively prayed for an extension, so as to ensure that the interest of the accused does not get jeopardize. The time was once again extended by this court till 30.07.2023. It was to comply with this final timeline that the presiding judge has been rejecting any unnecessary application for adjournments. Further, to safeguard the interest of the accused, the statement was made that if the lawyer for the accused is not present due to any reason, then instead of granting adjournment, the submissions and proceedings of the court would be noted by another advocate of the petitioner who, according to the public prosecutor is a leading senior advocate having more than 40 years of standing at the bar. This, in the opinion of the court, is an established practice of courts across the country. Ordinarily, when any matter is to be decided within a time bound period and on



such an occasion one lawyer is unable to attend the court proceedings due to his pre-occupation in some other Court or due to personal reason, his colleague (who is equally senior) takes the note of the hearing and lawyer is given an opportunity to meet the arguments on the date and time when he is available. This by no stretch of imagination can be said to be denial of opportunity of fair hearing as has been sought to be canvassed by the petitioner. In the present case it is clear that the matter has not been heard ex-parte or without affording an opportunity of hearing to the accused petitioner. Further, this court finds that in absence any challenge to the order dated 26.04.2023 passed below application Exh.722 the presiding judge had no power to review its earlier order. As such this court finds no reason to interfere with the impugned order passed by the learned presiding judge rejecting the petitioner's application vide Exh.731. The said order does not suffer from any patent illegality and therefore the present petition to this effect is rejected.

24. The petitioner has submitted that, the petitioner's application made vide Exh.738 dated 05.05.2023 with a prayer to recall order passed below Exh.723 and also recall all the consequential *ex-post-facto* proceedings from the records of Special NDPS Case No. 3 of 2018 as being non-est. As pointed out by the State the petitioner has failed to challenge the order passed by learned Special Judge below the application Exh.723 and without challenging the same, petitioner had given another application before the same Court i.e. Exh.738.



which virtually amounts to review of the its earlier order. This court agrees with the submission made by the state in this regard that it is not permissible for the learned Special Judge to review or recall its earlier order. Thus this court finds no reason to interfere with the order passed by the learned Presiding Judge under Exh. 738. The present petition in this issue stands rejected.

25. In light of the aforesaid discussion this court finds that the present petition is devoid of any merits. The same is accordingly dismissed with no order as to costs.

RINKU MALI

(SAMIR J. DAVE,J)

-:FURTHER ORDER:-

After the pronouncement of the judgment, a request being made by the learned advocate for the petitioner for staying the present order, learned advocate for the original complainant has vehemently opposed for granting stay of the order.

The offence is of the year of 1996 and the direction is given by the Hon'ble Co-ordinate Bench to conclude the trial and as there is no interim relief has been granted earlier by this Court, therefore, request being made by the learned advocate for the petitioner is hereby rejected.

RINKU MALI

(SAMIR J. DAVE,J)