NEUTRAL CITATION
2024:GUJHC:37264

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY SUBORDINATE COURT) NO. 1058 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI Sd/-

==

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

==

KADARSHA LATIFSHA SAIYED THRO JAMILSHA KADARSHA SAIYED
Versus
STATE OF GUJARAT & ANR.

==

Appearance:
MR ASHISH M DAGLI(2203) for the Applicant(s) No. 1
for the Respondent(s) No. 2
MR HARDIK MEHTA, ADDITIONAL PUBLIC PROSECUTOR for the Respondent(s) No. 1

==

CORAM:**HONOURABLE MS. JUSTICE GITA GOPI**

Date : 19/07/2024
ORAL JUDGMENT

1. **RULE** returnable forthwith. Learned Additional Public Prosecutor waives service of notice of Rule on behalf of the respondent – State.

2. By way of this application filed under Section 379 and 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to in short as 'Cr.P.C.'), the challenge is made to the legality and validity of the order dated 07.06.2024 passed by the learned Judicial Magistrate First Class, Mandvi, Kutch in Criminal Miscellaneous Application No.166 of 2024 whereby the application preferred by the respondent authority under Section 439(2) of the Cr.P.C. came to be allowed and the regular bail granted in favour of the applicant was cancelled. Further, the applicant alongwith the other co-accused were ordered to be taken into custody and an amount of Rs.1,00,000/- deposited as per the suspension of condition for a limited period was ordered to be forfeited. Being aggrieved and dissatisfied with the same, the applicant has come in this Criminal Revision Application contending the impugned order passed is unjust, improper and against the settled legal position of law.

3. As per the facts of the case, an First Information Report (FIR) came to be filed with Mandvi Police

Station as 'A' Part C.R. No.190 of 2024 for the offences punishable under Sections 365, 341, 323, 506(2), 120B and 188 of the Indian Penal Code, which was lodged on 10.05.2024 for the incident alleged to have occurred on the same day. As per the complainant, two days prior to the FIR, there was some grievance with regard to the running of a political party and therefore, an altercation had taken place and the FIR came to be filed alleging the injuries caused on account of the altercation. It is further submitted that the applicant was granted bail vide an order dated 24.05.2024 by the learned Judicial Magistrate First Class, Mandvi, Kutch in Criminal Miscellaneous Application No.166 of 2024, and one of the conditions for bail was that till the filing of the charge-sheet, the applicant was to mark his presence at the concerned Police Station, every first and 16th day of the month between 11.00 a.m. to 2.00 p.m. It is further submitted that a Report was filed by the Investigating Officer alleging breach of the conditions of bail on 01.06.2024; urging that the present applicant failed to mark his presence as per the order of the Court. It is further submitted that a reply was filed by the applicant before the learned Court stating that the applicant is a Scholar of Muslim Community and since there was a death of one – Nograni Kursumbai on 01.06.2024, the applicant had to attend the last rituals and because of that, the applicant could not mark his presence between 11.00 hours to 14.00 hours, but on the very same day, at 17.00 hours, the applicant had remained present before the Investigating Officer but since the other accused were not present, the Agency had asked the applicant to come with the other co-accused and by the time, they appeared before the Investigating Officer, it was conveyed to them that the time to report is over and accordingly, their presence was not actually marked.

4. Learned Advocate Mr. Ashish M. Dagli further submitted that though the clarification was given to the learned Court, it failed to appreciate. It is also submitted that the conditions while granting bail are laid down to ensure the availability of the accused before the learned trial Court and when the accused before the Investigating Officer or the Police, it is on behalf of the Court, till the accused are committed

for the cognizance of the case to the concerned Court. It is further submitted that the presence was ordered to be marked before the Investigating Officer as the charge-sheet was yet to be filed and further, the time slot directed would be for the convenience of the Investigating Officer. Further the conditions would not suggest that the Police Station cannot condone the delay as the Police Station remains open 24x7; thus, learned Advocate Mr. Ashish M. Dagli submitted that the Investigating Officer could have relaxed the time slot and should have observed the presence of applicant on the date directed, in the Police Station.

5. It is also submitted that the applicant had prayed by filing an application allowing him to go for 'Haj' for a specific period and for that purpose had made a prayer for passport. The said application was allowed on 31.05.2024 by the learned Judicial Magistrate First Class, Mandvi at Kutch permitting the applicant to travel between 07.06.2024 to 20.06.2024 and the applicant was asked to deposit Rs.1,00,000/-, which was complied with. However, while rejecting the bail application, the said amount was ordered to

be forfeited by the learned Judicial Magistrate First Class, Mandvi at Kutch.

6. Learned Advocate Mr. Ashish M. Dagli submitted that the order cancelling the bail, as well as forfeiting the above amount, is unjust, improper and illegal. It is also submitted that the bail once granted cannot be cancelled mechanically, while the learned trial Court was required to verify the Report of the Investigating Officer and could have dwelled further into the details and should not have believed the Report of the Investigating Officer as totally true. It is also submitted that the time slot which has been ordered is for the convenience of the Investigating Officer but such convenience could not be made a ground for rejection as there would be delay owing to the unavoidable reason. It is further submitted that social functions, occupation, medical conditions, as well as the traffic congestions of the City are the grounds which should have been considered on an humanitarian approach. It is further submitted that permission which was granted for Haj was also rejected with the order the amount of Rs.1,00,000/- is unjust, illegal and unreasonable. It is further

submitted that the applicant had attended the Police Station on **01.06.2024** while on **02.06.2024**, he had already started his journey for 'Haj'. Therefore, at present, the applicant is on 'Haj', and the conditions were relaxed for the period from **06.06.2024** to **20.07.2024** while the order cancelling the bail is dated **07.06.2024** and hence, this Court may exercise the discretion in favour of the applicant.

7. On the other hand, learned Additional Public Prosecutor Mr. Hardik Mehta submitted that specific condition laid down by the learned Court was to ensure that the same are fulfilled in its totality and time period which puts constraints on marking presence before the concerned Police Station would be with a specific requirement to ensure in the present matter that there would not be any untoward incident in the interregnum period and more so, when the facts emerging are regarding the political alliance of an individual party. It is further submitted that the Report of the Police would be just to ensure the law and order prevailing and no further incident as noted in the First Information Report takes place and submitted that the bail granted has been rightly rejected by the learned trial Court, as well as forfeiting of the above stated amount, has been a consequential effect.

8. Having heard the submissions canvassed and on perusing the records of the case, the bail has been granted qua the applicant after having considered the relevant considerations regarding seriousness of the offence, the emerging evidence and the circumstances which are peculiar to the case, the likelihood of accused fleeing from justice, tampering of evidence, reliance of prosecution witness etc. After having considered all the above facts, the bail granted should not be cancelled mechanically unless and until some supervening circumstances are brought to the notice of the Court.

9. The Court while granting bail to the applicant had already noted about the merits of the matter and thereafter, having laid down the conditions, has granted bail to the applicant.

10. Since the charge-sheet was not filed, one of the conditions laid down was directing the applicant to

mark his presence before concerned Police Station. Generally, the Court would note specific date and time for marking presence before the Police Station and such dates are given for the convenience of the Police and not for the accused. The learned trial Court Judge while noting the conditions of marking presence on every 1st and 16th of month had further directed to mark presence between 11.00 a.m. to 2.00 p.m. on those dates.

11. The accused would always have the liberty to pray for concession from the Investigating Officer on those dates to relax the time slot by urging the cause for the delay or for a pre-ponement of time for marking his presence. The only intention of putting the condition is to note the presence on that date as directed. Such specific direction does not amount to suggest that the Investigating Officer cannot relax the time or the date for marking presence. The Officer could have reported before the concerned Court of the inconvenience of the accused and rather should have accommodated the accused. Invoking the delay in time in marking presence as a ground for cancellation of the bail, cannot be considered as

supervening circumstances for cancellation of bail.

12. The object of bail has been laid down in case of **Sanjay Chandra Vs. CBI**, reported in **(2012) 1 SCC 40**, wherein in para-14, the Hon'ble Supreme Court held as under :-

> Para-14:- 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. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, `necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be pun-

ished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."

13. In case of **Dolat Ram v. State of Haryana**, reported in **(1995) 1 SCC 349**, the Hon'ble Supreme Court in para-4 held as under :-

> "4. Rejection of 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 bail, broadly (illustrative and not exhaustive) 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 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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

14. Thus in the case of **Dolat Ram** (supra), it has been held that 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. In the case of **X Vs. State of Telangana**, reported in **2018 (16) SCC 511**, the Apex Court has held that bail once granted should not be cancelled unless a cogent case based on a supervening event has been made out. It has been observed that second FIR is not a supervening circumstance of such a nature, as would warrant the cancellation of bail, which was granted by the High

Court. In the present case, the applicant was even permitted to attend 'Haj' for the period between **06.06.2024** to **20.07.2024** and such permission was granted by suspending the conditions taking into consideration all the facts that the applicant would attend the trial in connection with the subject First Information Report.

15. The Hon'ble Supreme Court in case of **Gurcharan Singh & Ors. Vs. State (Delhi Administration)**, reported in **(1978) 1 SCC 118**, held two paramount considerations, while considering petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, there is likelihood of the accused fleeing from justice and his tampering with prosecution witnesses. Both of them relate to ensure a fair trial of the case. Therefore, to ensure a fair trial, all considerations are explored while granting bail. Thus, when the question is raised on the power to cancel bail, the same has to be exercised with great care and circumspection. Cogent and overwhelming circumstances are necessary for an order seeking cancellation of bail.

16. This Court would also like to refer to the decision in the case of **Merubhai Ramabhai Khodiyatar (Hun) Rabari v. State of Gujarat** reported in **2021 (2) G.L.R. 1175.** In Paragraph 16.1, it was held as under :-

> "The grounds for cancellation of bail and grounds of rejection of bail are two different circumstances and hence the consideration of the court on the issue also becomes different, while hearing the application for cancellation of bail, the court has to be more rigid, as it has to examine not only the possibility of violation, but also the possible consequences. The power of cancellation of bail must be exercised with care and circumspection keeping in mind the urgent and overwhelming circumstances. The bail already granted should not be cancelled on a routine manner, as it jeopardizes the personal liberty of the person. In the present case, the respondent - State has not been able to show any supervening circumstances, which would reflect that the liberty, granted to the accused, was misused, and no longer conducive to a fair trial."

17. As per the facts of the case, it appears that such order which was granted by the concerned Court was not found favorable by the Investigating Officer. Hence, in order to see that the order gets frustrated, the Report has been filed by the Police to urge that on 01.06.2024, though the applicant was bound to attend the Police Station between 11.00 a.m. to 2.00 p.m. but had failed to do so and his delayed presence on that day has been considered as breach of the conditions of the learned trial Court. Once a discretion has been exercised for granting of bail for a person, it should not be cancelled as that would affect the liberty of the accused since the bail granted is only after considering all the ingredients necessary to enlarge the person on bail. It is not the case that the applicant had not attended the Police Station on that day. The conditions of bail are to ensure that the accused would be available for trial. The learned Court should only be concerned about accused's availability during the trial.

18. Such conditions for marking presence before the Investigating Officer would always create friction and would unreasonably call for the unfavorable situation which would give leverage to the Investigating Officer, to even frustrate the order of the Court wherein in this case, the applicant was even permitted to attend 'Haj'. The intention of the Police was also required to be examined by the Court.

19. It is needless to point out that such conditions of marking presence at Police Station would invite many grievances which may also lead to abuse of human rights and may give a scope of false allegations which would lead to multiplicity of proceedings and unverified aspects. Many a times, the CCTV Footage would not be available to the Court to verify the aspect about the authenticity of the claims and counter claims.

20. In view of the aforesaid discussion and for the reasons given hereinabove as well as considering the ratio laid down in the above decisions, this application succeeds. The order dated **07.06.2024** passed by the learned Judicial Magistrate First Class, Mandvi, Kutch in Criminal Miscellaneous Application No.**166** of **2024** is unjust, illegal and improper and therefore, the same is quashed and set aside. Further, the order passed forfeiting the amount of Rs.**1,00,000/-** stands cancelled and this amount be paid to the applicant herein, who on his return from 'Haj', shall mark his presence before the concerned Court.

NEUTRAL CITATION
2024:GUJHC:37264

21. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

Sd/-
(GITA GOPI,J)

CAROLINE