



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER CHARGESHEET) NO. 2973 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

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

PRADEEP NIRANKARNATH SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR. R.J. GOSWAMI, LD. ADV. WITH MR HB CHAMPAVAT(6149) for the Applicant(s) No. 1

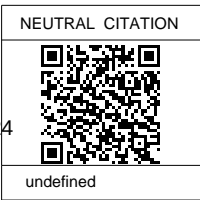
MR. MITESH AMIN, LD. ADDL. ADV. GENERAL WITH MR. L.B. DABHI, LD. ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 20/03/2024

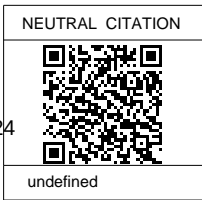
CAV JUDGMENT

1. Rule returnable forthwith. Learned APP waives service of notice of rule for and on behalf of the respondent-State.



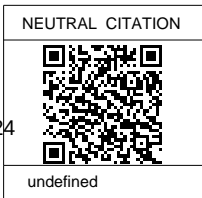
2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the FIR being C.R. No.11201017230006 of 2023 registered with the CID Crime Boarder Zone Police Station, District: Kachchh-Bhuj (West) of the offence punishable under Sections 409, 217, 120B, 114 of the Indian Penal Code and Section 7(c) of the Prevention of Corruption Act.

3. Briefly stated the allegations levelled in the FIR are that the complainant, namely, Kalpnaben Sursinh Godiya, Mamlatdar, Bhuj (City), District: Kachchh, being authorized by the Office of the Collector & District Magistrate, Bhuj, has filed the present complaint pursuant to the illegalities committed by the then Collector, Kachchh-Bhuj while granting N.A. Permission in respect of the parcel of land admeasuring 1 Acre 38 Gunths, out of the total area of the land admeasuring 5 Acre 38 Gunthas of Survey No.709, Government Tra. Survey No.870 situated at Moje Bhuj City, Taluka: Bhuj alleging that the applicant-Shri Pradipkumar Nirankarnath Sharma, a retired I.A.S., who had worked as the Collector & District Magistrate, Bhuj from the period between 02.05.2003 and 03.06.2006 and was the custodian of the land in question bearing Government Tra. Survey No.870, admeasuring Acre 1 Gunthas 38, situated at Moje Bhuj City, Taluka: Bhuj has, in connivance with the other co-accused, just with a view to get some undue monetary benefit, performed its duties dishonestly and allotted the government vest land in favour of the other co-accused in a less price compared to its actual value by making illegal conversation of the land from non-agricultural to residential



and thereby committed criminal breach of trust to the Government by misusing his powers in an illegal and arbitrary manner which has caused a loss of crores of rupees to the Government exchequer. Hence, the present FIR.

4. Learned advocate Mr. R.J. Goswami assisted by learned advocate Mr. H.B. Champavat appearing for the applicant has submitted that pursuant to the registration of the FIR, the applicant-accused was arrested on 21.09.2023 and is lying in the judicial custody since then. Learned advocate Mr. Goswami has also submitted that now the investigation has been completed and charge-sheet has also been filed. It is moreso submitted that as per the case of the prosecution, the so called incident occurred during the period between 05.11.2003 and 15.03.2005, for which, the first information report came to be lodged on 21.09.2023 and, therefore, there is a gross unexplained delay of more than 19 years in registering the FIR. Learned advocate Mr. Goswami further submits that the FIR was filed against total three persons wherein the applicant-accused has been shown as accused No.1. He would further submit that the accused No.3, who is the real beneficiary in the entire episode, has already been enlarged on bail by this very Court and, therefore, the applicant-accused is also entitled to be released on bail on the ground of parity. Learned advocate Mr. Goswami further submits that the applicant-accused was a public servant holding the post of Collector at the relevant point of time and while discharging his duties, the applicant-accused had cleared certain files after following all necessary and requisite procedures as per the law, however, now after a period of almost almost 19 years, the prosecuting agency has



come with a case that the applicant-accused had committed grave illegality in processing the file of the co-accused which is contrary to the various norms and circulars issued by the State Government from time to time which the applicant-accused had done in his official capacity as the employee of the Government, which has never been objected and challenged by any of the government authorities since this many years. He would further submit that nowhere in the entire FIR, there is any mention about the quantum of the amount received by the applicant as a illegal gratification. Learned advocate Mr. Goswami further submits that one after another, the State Authority has been filing the FIRs against the applicant-accused just to see that the applicant-accused cannot come out of the jail.

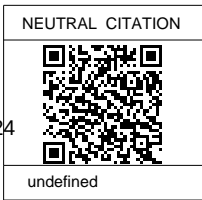
5. Learned advocate Mr. Goswami has submitted that in the year 2018, there was an amendment in the Prevention of Corruption Act, 1988, and as per the amended Section 19 of the Prevention of Corruption Act, at the time of submission of the charge-sheet papers, the prosecuting agency has to annex a copy of the sanction obtained from the competent authority for prosecuting against any government employee, however, in the present case, there is no such sanction obtained by the rival side for initiating proceedings against the applicant-accused and, therefore, in the absence of any such sanction being obtained for initiation of the proceedings against a retired government employee so far as invocation of the provisions of the Prevention of Corruption Act are concerned, the bail application of the applicant-accused is required to be considered and the applicant-accused is required to be



enlarged on bail. It is next submitted that there is a clear cut non-compliance of [Section 17A](#) of the Prevention of Corruption Act, 1988 in implicating the applicant under Section 7(c) of the 1988 Act and proceeding against him inter alia, under the aforesaid provisions which says that before initiating any proceeding against the public servant either retired or in duty, the police has to obtain previous approval. From the competent authority before conducting any inquiry or investigation into any offence alleged to have been committed by the government servant. Moreover, just to make good its case, the investigating agency, at the time of filing an affidavit before the trial court while opposing the bail application of the applicant, has relied upon certain past antecedents against the applicant-accused though the applicant-accused has already already been bailed out in all those offences.

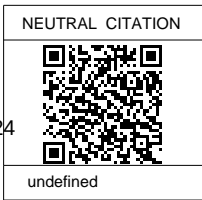
6. In such circumstances, referred to above, learned advocate Mr. Goswami prays that there being merit in his application, the same be allowed and the applicant-accused be released on bail.

7. Per contra, learned Additional Advocate General Mr. Mitesh Amin assisted by learned APP Mr. L.B. Dabhi appearing for the respondent-State has opposed the present bail application with a vehemence and submitted that in all total ten offences have been registered against the applicant-accused. The applicant-accused was working as the Collector and during his entire stint, he has indulged himself in many illegal activities and just with a view to get personal monetary benefits, passed certain orders which are against the policy of

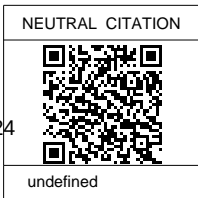


the State Government thereby caused huge loss to the Government exchequer. It has been submitted that if the Court would go through the contents of the affidavit filed by the investigator, it is found that there are in all ten offences registered against the applicant-accused in past which relates to the offences pertaining to corruption Act, Section 409 of IPC etc. and in one of the offences, he has been convicted. The purpose of placing on record the past antecedents of the applicant-accused is to bring it to the notice of the Court that the applicant-accused was habitual in doing such kind of offence while discharging his duties as Collector and thereby misused his position. Therefore, considering the checkered history of the applicant-accused in committing such kind of offence at the various stations where he was posted, no undue leniency is required to be shown in favour of the applicant-accused. It is submitted that as a government servant, he was supposed to discharge his duties in the interest of the Government, however, instead of doing so, the applicant, for his own personal monetary benefits, misappropriated the government lands not only once but on number of occasions. Learned AAG Mr. Amin would further submit that just to satisfy his greed of making money, the applicant-accused has abused his position by passing favourable orders in favour of the interested person and thereby has caused loss of crores of rupees to the government exchequer for which number of cases have been registered against him.

8. Learned AAG Mr. Amin submits that so far as the present case is concerned, the accused No.3-Sanjaybhai C. Shah purchased one parcel of land by way of registered sale deed

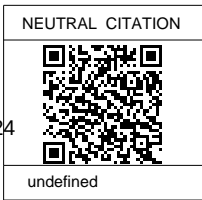


dated 14.03.2003 and subsequently on the basis of the said sale deed, an entry also came to be mutated in the revenue record in this regard which was certified on 30.10.2003. Thereafter, immediately within five days, the said Sanjaybhai Shah had preferred an application to the Deputy Collector, Bhuj for obtaining another parcel of adjacent land for agriculture purposes. It is further submitted that there is one circular issued by the Government dated 25.09.1997 indicating as to how and in what circumstances, the land which was sought for, can be given for agricultural purposes and the applicant-accused had to work within the four corners of the said circular for the purpose of allotment of the land to any person. The said circular was within the knowledge of all and one, even though the land was allotted to the accused No.3 for the reason of being a fragment land on certain terms and conditions. One of the conditions is that the said land is allotted only for the purpose of carrying out the agricultural activities. Learned AAG Mr. Amin further submits that within few months from the date of allocation of the land, the accused No.3 again preferred an application for conversion of the said land from agricultural land to residential zone which was considered by the applicant-accused after considering the opinion/report submitted by his sub-ordinate officer working under him, however, the applicant-accused very deliberately has not mentioned anything about the contents of the said report in his order where it was in the negative or positive, which clearly shows that the applicant-accused had shown undue favour to the accused No.3 while holding the key post of the Government, which is also corroborative from the other



documents gathered by the investigator in the form of certain documents and statements of the persons. It is moreso submitted the applicant-accused, being a Collector, was fully aware about the fact that a railway line and a public road was passing through the said land, even though, he permitted the conversion of the land from agriculture to residential land. Not only that on realizing his mistake, the applicant-accused had revised its own order on the basis of the application made by the allottee.

9. Learned AAG Mr. Amin further submits that in the year 1997, one resolution was issued by the Government on being come to know about certain irregularities committed by its top-brasses of illegally allotting the lands which are even otherwise not allotable to the various persons by misusing their powers and post. It is further submitted that the learned advocate appearing for the applicant has placed reliance upon two orders of the Hon'ble Supreme Court, one of which is an interim order and the matter is still at large before the Supreme Court and the second order on the basis of which parity is sought for, the role of the accused therein is quite distinct and different than the role of the applicant-accused. Learned AAG Mr. Amin further submits that so far as the ground raised by learned advocate for the applicant as regards previous sanction from the competent authority not being obtained in the present case, it is respectfully submitted that as per the true interpretation of the Explanation to Section 19, sanction can still be obtained as the charge has yet not been framed in the present case. It is further submitted that so far



as the submission of bar of Section 17A is concerned, the said issue came up for consideration before the Hon'ble Apex Court wherein there were two conflicting views of the two judges and, therefore, the matter was referred to the larger Bench which is still at large before the Larger Bench. So far as the delay part is concerned, it is submitted that the applicant-accused was a government employee and there were slew of orders passed by the applicant in its capacity as the Collector working at different stations and before initiating any action against the delinquent, all such files had to be examined and some preliminary inquiry had to be initiated and after reaching to a particular conclusion whether any illegality has been committed or not, FIR could be filed and that is the only reason for delay in filing the FIR.

10. In such circumstances, referred to above, learned AAG Mr. Amin prays that there being no merit in this application, the same be rejected and the applicant-accused may not be released on bail.

11. Heard the arguments advanced on either side and also perused the materials available on record.

12. Before adverting to the rival contentions, let me first go through [Section 2](#) of the Prevention of Corruption Act, 1988 wherein "public servant" has been defined. [Section 2\(c\)](#) is reproduced as hereunder:

"2(c) Public servant means:-

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission



for the performance of any public duty;

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in [Section 617](#) of the Companies Act, 1956 (1 of 1956);

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

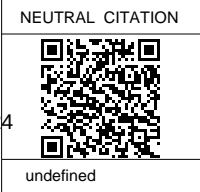
(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in [Section 617](#) of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee



of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

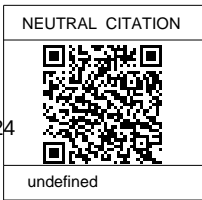
(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority."

13. Admittedly the applicant is also a public servant in view of the definition of [Section 2\(c\)](#) of the Prevention of Corruption Act.

14. The Supreme Court, in the case of [Raj Kishor Roy v. Kamleshwar Pandey and Anr.](#) reported in 2002 (6) SCC 543 wherein the matter was pending for quashing of complaint on the ground that sanction under [Section 197](#) Cr.P.C. not obtained, has observed that question of sanction can be raised at any time after the cognizance of offence is taken, may be even at the time of conclusion of trial.

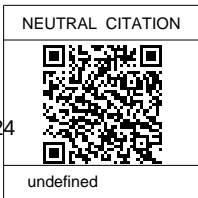
15. It is trite law, that for the purpose of considering an application for bail, although detailed reasons are not necessary to be assigned, and, therefore, the evidence need



not be weighed meticulously, a tentative finding should be recorded on the basis of broad probabilities. The order granting bail must demonstrate application of mind at least in serious cases where the applicant has been granted or denied bail. The findings recorded by the Court for grant or refusing bail being tentative, will not have any bearing on the merits of the case, and the trial court would proceed and decide the case on the basis of evidence produced during trial without in any manner being prejudiced thereby.

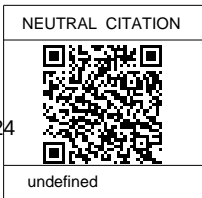
16. The charge-sheet under the PoC Act includes offences for unlawful gains to a private person at the expense of the public exchequer. Reference in this regard may be made to the provisions of Sections 7, 7A, 8 and 12 of the PoC Act.

17. Clauses (a) and (b) to Section 7 of the PoC Act apply: (a) when a public servant obtains, accepts or intends to obtain from another person undue advantage with the intent to perform or fail to improperly or to forbear or cause forbearance to cause by himself or by another person; (b) obtains or accepts or attempts to obtain undue advantage from a person as a reward or dishonest performance of a public duty or forbearance to perform such duty, either by himself or by another public servant. Explanation (2) construes the words and expression, "obtains, accepts or attempts to obtain", as to cover cases where a public servant obtains, accepts or intends to obtain any undue advantage by abusing his position as a public servant or by using his personal interest over another public servant by any other corrupt or illegal means. It is



immaterial whether such person being a public servant accepts or attempts to obtain the undue advantage directly or through a third party.

18. Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable offence like, (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) Nature of accusation and evidence therefor, (iii) Gravity of the offence and punishment which the conviction will entail, (iv) Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail, (v) Character and behavior of the accused, (vi) Means, position and standing of the accused in the Society, (vii) Likelihood of the offence being repeated, (viii) Reasonable apprehension of the witnesses being tampered with, (ix) Danger, of course, of justice being thwarted by grant of bail, (x) Balance between the rights of the accused and the larger interest of the Society/State, (xi) Any other factor relevant and peculiar to the accused. (xii) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. Furthermore, in the landmark judgment of **Gurucharan Singh and others v.**



State, (AIR 1978 SC 179), it was held that there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the courts. It was further held that there cannot be any inexorable formula in the matter of granting bail. It was further held that facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment itself mentioned the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

19. In the case of **Mallampati Gandhi S/O. Naga Raju vs The State of Telangana**, AIR ONLINE 2018 HYD 6, the Court held that, "Bail law on economic and white collar offences is well delineated and no more res integra. Echoing the concern for economic offences, which are more dangerous and having far reaching impact on society than bodily offences, Honble Apex Court and several High Courts have held that in dealing with such bail applications, Courts are required to analyze and evaluate certain relevant factors cautiously."

20. The Hon'ble Apex Court in the case of [Nimmagadda Prasad vs. Central Bureau of Investigation](#), reported in (2013) 7 SCC 466), has held as under;

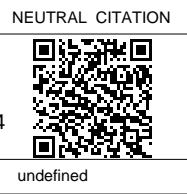
"23.Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fibre of the country's economic structure. Incontrovertibly, economic offences have



serious repercussions on the development of the country as a whole. In State of Gujarat v. Mohanlal Jitamalji Porwal this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under: (SCC p.371, para 5) #5.....The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.

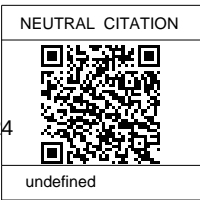
25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.μ”

21. Now coming back to the peculiar facts of the case on hand, it appears from the record that the applicant while working as the Collector at different places has committed various irregularities by illegally allotting the government vest lands to the interested persons. and in the case on hand also, the entire record indicates that the applicant-accused had shown undue favour to the accused No.3 by allotting the land to him which was not even allotable one and thereby abused the power of his post and position. It also appears from the statement of one Sanjaykumar Mohansinh Bariya that the



applicant-accused had received certain amount for doing a particular work which is contrary to law as well as various resolutions and circulars issued by the Government. Not only that, at the time of passing the order in favour of the accused No.3, the applicant-accused although knowing very well that there was a railway line as well as a public road passing through the land in question, yet by ignoring such a vital aspect, had proceeded to pass the order of allotment in favour of the accused No.3. So far as the issue of sanction is concerned, even otherwise without discussing on the merit of the case as trial has already been commenced, the applicant can raise the question before the trial whether the sanction is necessary or not. Furthermore, the said issue is also at large before the Larger Bench of the Apex Court and therefore touching the issue of sanction at this stage would be a futile exercise. That apart, it is an admitted position of fact that number of FIRs have been registered against the applicant-accused pursuant to the the similar kind of irregularities and illegalities as has been alleged in the present case. Thus, considering the overall materials available on record and the role attributed to the applicant-accused as well as the gravity and seriousness of the offence committed by the applicant-accused while sitting over the highest post post of the Government, this Court is not inclined to exercise any discretion in favour of the applicant-accused.

22. It is pertinent to note that in the recent times, there was an increase in socio economic offences in the country. These are the offences which are solely committed for personal gains.



These crimes are affecting every part of the country's economic structure and wrecking the people's faith in the system. In the following circumstances, the person is very influential and there is every chance to mislead the case. So in such cases bail should not be given. Allowing bail application depends upon the nature of the offence and related circumstances.

23. In view of what has been observed herein above, the present application fails and is hereby rejected. Rule is discharged.

(DIVYESH A. JOSHI,J)

VAHID