

**HIGH COURT OF GUJARAT
CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI
Date: 01/02/2024**

R/CRIMINAL MISC.APPLICATION (FOR CANCELLATION OF BAIL) NO.
930 of 2019

RAJNISH S/O SAWAL LILHA

VERSUS

RAKESH @ GOVIND BANWARILAL DHANDHARIYA & 1 other(s)

Legislation:

Sections 406 and 420 of the Indian Penal Code (IPC)
Section 439(2) of the Code of Criminal Procedure

Subject: Application for cancellation of anticipatory bail granted to the respondent in a case involving allegations of financial fraud.

Headnotes:

Application under Section 439(2) Cr.P.C. for quashing anticipatory bail – Petitioner seeks cancellation of anticipatory bail granted to respondent in financial fraud case involving Rs.90 lakhs – Anticipatory bail granted by 10th Addl Sessions Judge, Surat [Para 1].

Petitioner's Arguments – Bail granted on untenable grounds and without proper consideration of respondent's history as a habitual offender and the magnitude of the offence – Bail granted soon after FIR registration, alleged breach of bail conditions [Paras 2, 2.1].

Respondent's Defence – Acquittal in related cheque cases, no misuse of bail, and pending consideration of a quashing petition – No breach of bail conditions [Para 3].

Court's Analysis – Cancellation of bail requires strong reasons; no misuse of liberty by respondent or breach of bail conditions noted – Reference to precedents for bail cancellation criteria [Paras 5, 6, 9, 10, 11].

Precedents Cited:

- Centrum Financial Services Limited vs. State of NCT OF Delhi [AIR 2022 SC 650]
- Naveen Singh VS. State of Uttar Pradesh [2021 (6) SCC 191]
- Subodh Kumar Yadav v. State of Bihar [2019 (14) SCC 638]
- Sanjaybhai Manubhai Bhaliya vs. State of Gujarat [2022 (3) GLH (UJ) 1]
- Yashwantkumar Hiralal Patel vs. Hiteshkumar Chunnalal Agrawal [2017 JX (Guj) 949]
- Bhagirathsinh S/O Mahipat Singh vs State Of Gujarat [AIR 1984 SC 372]

- Bhagwan Singh v Dilip Kumar @ Deepu @ Depak [2023 INSC 7613]

Representing Advocates:

MR D K TRIVEDI for the Applicant

MR. SURAJ A SHUKLA for the Respondent No. 1

MR HK PATEL APP for the Respondent No. 2

ORAL ORDER

1. By way of the present application under Section 439(2) of the Code of Criminal Procedure, the petitioner-org. complainant has prayed to quash and set aside the order dated 05/10/2018 passed by the learned 10th Addl Sessions Judge, Surat in Criminal Misc. Application No.4702 of 2018, whereby the learned Session Judge has granted anticipatory bail granted to the respondent–original accused.

2. Learned Advocate Mr.Trivedi for the petitioner would submit that the learned Court below has granted anticipatory bail on untenable grounds and considerations foreign to grant or refusal of bail has been considered by the Court below. He would submit that the impugned order is cryptic and without assigning any good reasons, the said order is passed in a case where huge amount of Rs.90.00 Lakhs and odd are involved in commission of offence. He would therefore submit that Court below has committed serious error in granting anticipatory bail within few days of registration of the FIR. He would further submit that in order to save the skin, the accused has filed a complaint which is produced at Annexure – Q seedling the liability by saying that nephew of respondent has stolen the cheque book and forged the signature of the respondent; but since the respondent is habitual offender and duped not only the first informant / petitioner; but also other persons in Surat and has taken away huge amount. He would submit that all these aspects have not been considered by the learned Court below while granting anticipatory bail and therefore impugned order may be quashed and set aside and bail of the respondent may be cancelled.

2.1 Learned Advocate Mr.Mehta would further submit that one of the condition imposed in the bail order of marking presence and to furnish the bail bond have not been complied with and therefore even on the ground of making breach of conditions of bail order, the bail may be cancelled.

2.2 Learned Advocate Mr.Mehta in support of his submissions relied upon the following decision:

- (01) Centrum Financial Services Limited vs. State of NCT OF Delhi [AIR 2022 SC 650];
- (02) Naveen Singh VS. State of Uttar Pradesh [2021 (6) SCC 191];
- (03) Subodh Kumar Yadav v. State of Bihar [2019 (14) SCC 638];
- (04) Sanjaybhai Manubhai Bhaliya vs. State of Gujarat [2022 (3) GLH (UJ) 1]
- (05) Yashwantkumar Hiralal Patel vs. Hiteshkumar Chunnalal Agrawal [2017 JX (Guj) 949.

2.3 By making above submissions, learned advocate Mr.Mehta would submit to allow this petition.

3. Objecting to the above submissions, learned Advocate for the respondent-accused would submit that two Criminal Cases bearing No.1470 & 1471 of 2022 in respect of the cheques involved in the offence came to be filed wherein the respondent came to be acquitted by the learned Court below by accepting the defence purported by the respondent and holding that there was no sale transaction took place between the parties. He would further submit that after the respondent enlarged on anticipatory bail, he has preferred the quashing petition before this Hon'ble Court wherein the coordinate Bench as per order dated 15/10/2018 stayed the investigation and subsequently report is filed by the IO and the matter is still pending consideration. He would further submit that respondent has not committed any breach of condition as submitted by learned Advocate for the applicant; neither misused the personal liberty and therefore petition may be dismissed.

4. Learned APP submits to pass appropriate order considering the facts and circumstances of the case.

5. Having considered the submissions of rival sides, what emerges from the record that the learned Court below has considered all the relevant consideration for granting bail in the offence punishable under the provisions of Section 406 and 420 of the IPC. To be noted that, respondent is enlarged on bail since 05/10/2018 and it is not the case of the petitioner that respondent has misused the liberty. Refusal to grant the bail at initial stage is one thing and cancellation of bail after granting is another thing. There should be strong reasons for cancellation of the bail already granted and the Court cannot cancel the bail mechanically.

6. In Bhagirathsinh S/O Mahipat Singh ... vs State Of Gujarat [AIR 1984 SC 372], the Hon'ble Apex Court has held that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. In paragraph 8 it has been observed thus:

“8. In our opinion, the learned Judge appears to have misdirected himself while examining the question of directing cancellation of bail by interfering with a discretionary order made by the learned Sessions Judge. One could have appreciated the anxiety of the learned Judge of the High Court that in the circumstances found by him that the victim attacked was a social and political worker and therefore the accused should not be granted bail but we fail to appreciate how that circumstance should be considered so overriding as to permit interference with a discretionary order of the learned Sessions Judge granting bail. The High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was for cancellation of the bail. Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. And the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court.”

7. What further appears from the observations made by the learned court below while granting anticipatory bail that there was business transaction since 2014 between both the parties and dispute pertains to non-payment of amount in respect of commercial transaction relating to embroidery job work. Furthermore, the learned Court below has also recorded that the contention of learned Advocate for the applicant therein that the cheques forming subject matter of the present complaint were stolen from his shop and misused by the present co complainant cannot be appreciated without recording of evidence and detailed scrutiny of the evidence which should be avoided at this stage. In fact, the cheques which is said to have been part of the subject matter wherein as recorded earlier the respondent came to be acquitted by the learned Court below.

8. The Court below has taken into consideration law laid down in the case of Siddharam Satlingappa Mhetre v/s. State of Maharashtra and Ors. [2011] 1 SCC 694 and according to this Court, the petitioner has failed to make out any consideration which may believe that impugned order is whimsical, arbitrary and against the settled position of law.

9. It is not even the case of the IO or the prosecution that conditions imposed by the learned Court below has been breached by the respondent and therefore the said aspect would not be considered. To be noted that refusing to grant bail is one consideration and cancellation of bail is different as it deals with the personal liberty of the person.

10. Insofar as the reliance placed upon the decisions relied upon by the learned Advocate for the petitioner, of course, they are on cancellation of bail, but in the facts of the present case, as noted herein above no untenable grounds are discerned or pointed out by learned advocate for the petitioner and therefore the said decisions would not be applicable to the facts of the present case.

11. In *Bhagwan Singh v Dilip Kumar @ Deepu @ Depak* reported in 2023 INSC 7613, the Hon'ble Apex Court after considering judgment in case of *Dolat Ram v State of Haryana*, (1995) 1 SCC 349; *Kashmira Singh v Duman Singh*, (1996) 4 SCC 693 and *X v State of Telangana*, (2018) 16 SCC 511, held as follows:

'13. It is also required to be borne in mind that when a prayer is made for the cancellation of grant of bail cogent and overwhelming circumstances must be present and bail once granted cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it in conducting to allow fair trial. This proposition draws support from the Judgment of this Court in *Daulat Ram and others v. State of Haryana* reported in (1995) 1 SCC 349, *Kashmira Singh v. Duman Singh* (1996) 4 SCC 693 and *xxx v. State of Telangana* (2018) 16 SCC 511.'

12. Resultantly, present petition fails and stands dismissed.

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