

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR CANCELLATION OF BAIL) NO.
5164 of 2024**

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NITINBHAI SHANKARBHAI PRAJAPATI
Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR PRATIK Y JASANI(5325) for the Applicant(s) No. 1
for the Respondent(s) No. 2

MR HK PATEL, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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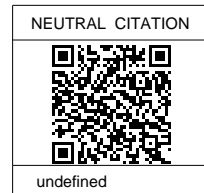
CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 23/04/2024**ORAL ORDER**

1. By way of the present petition under Section 439(2) of the Code of Criminal Procedure, 1973, the petitioner has prayed to quash and set aside the order dated 5.2.2024 passed by the learned 6th Additional Sessions Judge, Ahmedabad Rural in Criminal Misc. Application No.294 of 2024, whereby the learned Session Judge has granted regular bail to the respondent – original accused.

2. Heard learned advocate for the petitioner.

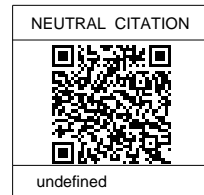
3. Learned advocate for the petitioner would submit that the respondent accused filed false application before the learned trial Court to travel to the USA. He would further submit that considering this aspect, the mens rea of the respondent No.2 could be unfurled that he does not want to face the trial, but want to flee to USA. It is further submitted that the respondent



No.2 has not complied with the conditions imposed in the bail order and therefore, there is good case to cancel the trial.

4. The above submissions cannot be accepted and can be answered in such a way that cancellation of bail is serious issue. Denying the bail and cancelling the bail are two different aspect. Cancellation of bail is touching to the personal liberty of the person. The petitioner, who is apprehending that the respondent No.2 shall flee to USA, is no reason to cancel the bail. The learned trial Court imposed sufficient conditions to secure the custody of the respondent accused during trial. To be noted that the State or the prosecution agency has not come before the Court stating that the respondent accused is not following the conditions of the bail orders, as has breached the condition of the bail.

5. Filing of application before the learned Sessions Court for seeking modification of the bail condition has been treated as serious apprehension by the petitioner complainant that the accused shall flee to the USA. Learned advocate Mr. Jasani would submit that the learned trial Court in no uncertain terms observed that filing of such application is with the oblique motive and therefore, it is apprehended that the respondent shall not stand to the trial. Filing of the application for modification of the condition is one thing and the decision thereon is another thing and cancellation of bail is altogether is a different thing. It is nothing to do with the apprehension of the petitioner that the respondent accused shall flee to the USA and would not stand to



trial.

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. In ***Bhagwan Singh v Dilip Kumar @ Deepu @ Depak*** reported in 2023 INSC 7613, this 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.'

8. Before parting with the order, I may also refer the observations made in the recent decision by the Hon'ble Apex Court in case of **Kekhriesatuo Tep and others Vs. National Investigating Agency** reported in (2023) 6 SCC 58. The relevant observation made in para 20 reads as under:-

"20. An interference by an Appellate Court and particularly in a matter when liberty granted to a citizen was being taken away would be warranted only in the event the view taken by the Trial Court was either perverse or impossible. On this limited ground, we find that the appeals deserve to be allowed."

9. Resultantly, present petition fails and stands dismissed.

SHEKHAR P. BARVE

(J. C. DOSHI,J)