

Bhavesh @ Lallo Chandrakant Patel vs The State Of Gujarat on 7 January, 2020

Bench: Mohan M. Shantanagoudar, R. Subhash Reddy

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 13/2020
(Arising out of SLP(CRL.) NO. 7559/2019)

BHAVESH @ LALLO CHANDRAKANT PATEL

APPELLANT(s)

VERSUS

THE STATE OF GUJARAT

RESPONDENT(s)

ORDER

1. Leave granted.

2. By the impugned judgment, the High Court confirmed the order passed by the Judicial Magistrate First Class, Vadodra permitting police remand of the Appellant herein for a period of four days for his interrogation in C.R. NO. III□328 of 2019, registered with Padra Police Station, Vadodara.

3. The records reveal that the Sessions Court had granted anticipatory bail to the Appellant on 12.07.2019. One of the terms in the bail order reads as follows:

“7. In case of Investigation Officer requires the remands of Applicant/Accused person for the matter of investigation proceedings, his right entitlement of remand is reserved and on seeking remand related application before Hon’ble Court, Reason:

same is required to be decided by Hon’ble Court and this Trial Court shall not come under influence of this order. Rights of remand to the both parties are kept reserved.”

4. In accordance with the same, the police filed an application before the Judicial Magistrate seeking remand of the Appellant for a period of seven days for the purpose of interrogation. By order dated 19.07.2019, this application was allowed and police remand of the Appellant was granted for four days. This order was confirmed by the High Court vide the impugned judgment dated 13.08.2019.

5. The question to be decided in this case is whether the Judicial Magistrate accorded sufficient reasons while allowing the application for police remand, especially given the fact that the Appellant was on anticipatory bail. In *Satyajit Ballubhai Desai & Ors. v. State of Gujarat* (2014) 14 SCC 434, this Court has observed that the police remand of an accused cannot be granted for an undisclosed or flimsy reason, particularly when the accused has been released on bail. The following excerpts are relevant to note:

“9. Having considered and deliberated over the issue involved herein in the light of the legal position and existing facts of the case, we find substance in the plea raised on behalf of the appellants that the grant of order for police remand should be an exception and not a rule and for that the investigating agency is required to make out a strong case and must satisfy the learned Magistrate that without the police custody it would be impossible for the police authorities to undertake further investigation and only in that event police custody would be justified as the authorities specially at the magisterial level would do well to remind themselves that detention in police custody is generally disfavoured by law...

20. In fact, when the accused had been enlarged on bail by the High Court, it was all the more essential initially for the police authorities and thereafter by the Magistrate to disclose and assign convincing reasons why investigation could not proceed further without seeking police remand of the accused and in case police remand was sought on any ground of interference with the investigation in any manner alleging influencing the witnesses or tampering with the evidence in any manner, straightaway it could have been a case for cancellation of bail of the accused and the Magistrate could have directed the police authorities to approach the High Court seeking cancellation or any other appropriate direction.

21. What is sought to be emphasised is that the disclosure of reasons by the Magistrate allowing police remand especially in a matter when the accused has been enlarged on bail by the High Court is all the more essential and cannot be permitted in the absence of a valid and sufficiently weighty reason seeking such custody, as it clearly affects the liberty of an individual who has been enlarged on bail by a court of competent jurisdiction.”

6. Similarly, in *Mithabhai Pashabhai Patel & Ors v. State of Gujarat* (2009) 6 SCC 332, this Court has held that ordinarily, the accused should not be taken in custody unless their bail is cancelled.

7. In view of these decisions, and upon a perusal of the order of remand dated 19.07.2019, we find that certain valid reasons have been assigned by the Judicial Magistrate while granting police remand of the Appellant. It appears that the Appellant is trying to avoid his interrogation by the police for reasons best known to him. When the investigation was carried out at his house, he was not present. Later, there was also a contradiction between his statement about the date on which he was asked to be present before the Court for interrogation and the Case Diary. This led the State to seek his remand on the basis that he was not cooperating with the investigation. Though the order of

remand dated 19.07.2019 is not satisfactorily worded, the relevant records produced before this Court are sufficient to conclude that the presence of the Appellant is necessary for further investigation into the matter.

8. The remand order was passed by the Judicial Magistrate on 19.07.2019. About five months have elapsed since that order, but the presence of the Appellant has still not been secured. Having regard to the totality of circumstances, we direct the appellant to appear before the Investigation Officer at 11 a.m. on 04.02.2020 for the purpose of interrogation. In case the interrogation is not complete on that day, it is open for the Investigation Officer to seek remand of the Appellant by filing an application before the Judicial Magistrate. Such request may be considered based on the circumstances prevailing at the relevant point in time.

9. We also make it clear that the Appellant shall abide by all the conditions imposed upon him in the order granting anticipatory bail. He shall cooperate with the investigation and shall appear before the Judicial Magistrate/Investigation Officer whenever required. In case of a violation of any of the conditions, it is open for the State to move an application for cancellation of the anticipatory bail.

10. With these observations, the instant appeal is disposed of.

.....J. [MOHAN M. SHANTANAGOUDAR]J.
[R. SUBHASH REDDY] NEW DELHI;

JANUARY 07, 2020.

ITEM NO.30

COURT NO.13

SECTION II-B

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Petition(s) for Special Leave to Appeal (Crl.)

No(s). 7559/2019

(Arising out of impugned final judgment and order dated 13-08-2019 in SCRA No. 7956/2019 passed by the High Court Of Gujarat At Ahmedabad) BHAVESH @ LALLO CHANDRAKANT PATEL Petitioner(s) VERSUS THE STATE OF GUJARAT Respondent(s) IA No. 127288/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT) Date : 07-01-2020 This matter was called on for hearing today. CORAM : HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR HON'BLE MR. JUSTICE R. SUBHASH REDDY For Petitioner(s) Mr. Purvish Jitendra Malkan, AOR Dharita Purvish Malkan, Adv.

Mr. Alok Kumar, Adv.

Ms. Bhavna Sarkar, Adv.

Mr. Jitendra Malkan, Adv.

For Respondent(s) Mr. Aniruddha P. Mayee, AOR Ms. Deepanwita Priyanka, Adv.

UPON hearing the counsel the Court made the following O R D E R Leave granted.

Appeal stands disposed of in terms of the signed order. Pending application(s), if any, stands disposed of accordingly.

(ASHWANI THAKUR)
COURT MASTER (SH)

(R.S. NARAYANAN)
COURT MASTER (NSH)

(Signed order is placed on the file)