

Gujarat High Court

Haji vs State on 11 May, 2010

Author: H.B.Antani,&Nbsp

Gujarat High Court Case Information System

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CR.MA/3192/2010 4/ 5 ORDER

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL
MISC.APPLICATION No. 3192 of 2010

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HAJI
AYUB KEVAR - Applicant(s)

Versus

STATE
OF GUJARAT - Respondent(s)

=====

Appearance
:
MR
EE SAIYED FOR MR. SIKANDER SAIYED
for
Applicant(s) : 1,
MR DEVANG VYAS, ADDL. PUBLIC PROSECUTOR for
Respondent(s) :
1,
=====

CORAM

:

HONOURABLE

MR.JUSTICE H.B.ANTANI

Date
: 11/05/2010

ORAL
ORDER

1. This application is preferred under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail by the applicant, who came to be arrested in connection with FIR registered as M. Case No. 66 of 2007 before learned Judicial Magistrate, First Class, Gandhidham for the offence punishable under Sections 406, 420 and 506 (2) of the Indian Penal Code.

2. Learned advocate Mr. Saiyed submitted that the applicant is an innocent person and he has been falsely implicated in the commission of the alleged offence. He further submitted that the applicant is a victim of circumstances and at best it can be stated that the applicant failed in fulfilling the promise made by him, but the same has not been done with any ulterior motive or pre-determination. He submitted that though the applicant started a scheme, it went beyond his control for various reasons. Learned advocate for the applicant, however, submitted that the applicant is willing to repay the entire amount to the complainant and he will deposit 1/3rd amount due to the complainant before the trial Court and the remaining amount will also be deposited before the trial Court within one month from the date of release and since the accused is willing to deposit the amount, his case may be considered sympathetically.

3. Learned Addl. Public Prosecutor Mr. Devang Vyas, while opposing bail application submitted that the applicant has cheated large number of persons coming from the lower strata of the Society. He submitted that considering the role attributed to the applicant and the manner in which the offence is committed, discretionary relief may not be exercised in favour of the applicant, and the application deserves to be dismissed.

4. Heard learned counsel appearing for the applicant and learned APP at length and in great detail. I have also perused the averments made in the application, submissions canvassed by learned advocate before me as well as the FIR produced on record. I have also considered the provisions of Sections 406, 420 and 506 (2) of the Indian Penal Code, gravity of the offence and quantum of punishment which can be imposed in the event of conviction of the applicant. Though the applicant has collected huge amount from persons belonging to the lower strata of the Society with the

promise of providing accommodation and later on did not do so, considering the fact that the applicant has volunteered and shown willingness to deposit 1/3rd amount immediately and the remaining amount within one month of his release on bail, I am of the view that taking into consideration the interest of the complainant in the peculiar facts and circumstances of the case and without making it as a precedent, the applicant is required to be enlarged on regular bail at this stage, without entering into the merits of the case and without discussing the evidence in detail.

5. The parties do not press for further reasoned order.

6. In the facts and circumstances of the case, the application is allowed. The applicant is ordered to be enlarged on bail in connection with M. Case No. 66 of 2007 registered before Gandhidham 'A' Division Police Station, subject also to the conditions that he shall:

[i]. Deposit 1/3rd amount due to the complainant before the learned JMFC Gandhidham before being enlarged on bail, as volunteered by the applicant.

[ii]. Before being enlarged on bail, file an undertaking before this Court in the present proceedings and produce a copy thereof to the learned JMFC, Gandhidham to the effect that he volunteers to deposit 1/3rd amount due to the complainant before being enlarged on bail and the remaining amount within a period of one month from the date of his release.

[iii]. Execute a bond of Rs.5,000/- [Rupees five thousand only] before the trial Court with one surety of the like amount to the satisfaction of the trial court.

[iv] Not take undue advantage of his liberty or abuse his liberty;

[v]. Not act in a manner injurious to the interest of the prosecution;

[vi]. Surrender his passport, if any, to the lower court within a week;

[vii]. Not leave the State of Gujarat without the prior permission of the Sessions court concerned;

[viii]. Mark his presence at Gandhidham 'A' Division Police Station twice in a month, i.e. on 1st and 15th of every English calendar month between 9.00 AM and 2.00 PM. till the trial is over;

[ix]. Furnish the present address of his residence to the I.O. and also to the Court at the time of execution of the bond and shall not change his residence without prior permission of this Court;

[x]. Maintain law and order.

[xi]. If 1/3rd amount due to the complainant is not deposited as volunteered, and if undertaking to pay 1/3rd amount initially and the remaining amount within a month from the date of his release as volunteered by the applicant is not filed, the applicant shall not be released.

[xii] If the remaining amount is not deposited within one month from the date of his release as per the undertaking, bail granted by this Court shall stand automatically cancelled.

7. If breach of any of the above conditions is committed, then also the learned Judge concerned will be free to issue warrant or to take appropriate action in the matter.

8. Bail bond to be executed before the lower Court having jurisdiction to try the case.

9. At the trial, the trial Court shall not be influenced by the observations of preliminary nature, qua the evidence at this stage, made by this Court while enlarging the applicant on bail.

10. Rule is made absolute to the aforesaid extent.

11. Direct Service is permitted.

mathew
J.]

[H.B.ANTANI,

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