

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR SUCCESSIVE REGULAR BAIL -
AFTER CHARGESHEET) NO. 11452 of 2023**

=====

MAYUR ALABHAI HATHALIYA

Versus

STATE OF GUJARAT

=====

Appearance:

MR MEET G RAVAL(10630) for the Applicant(s) No. 1

MS CM SHAH, APP for the Respondent(s) No. 1

=====

CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**

Date : 10/01/2024

ORAL ORDER

1. This successive bail application under Section 439 of the Code of Criminal Procedure, 1973 has been preferred by accused – Mayur Alabhai Hathaliya, who arrested on 01.02.2021, in connection with the offence registered with Jamnagar City “A” Division Police Station, Jamnagar for the offences punishable under Sections 307, 507, 114, 120B and 201 of the Indian Penal Code and Sections 25(1) (B)(A) of the Arms Act and Section 135 of the Gujarat Police Act.
2. This Court has heard learned counsel Mr.M.M. Tirmizi for the applicant and Ms.C.M. Shah, learned APP for the respondent – State.
3. Mr.Tirmizi, learned counsel has submitted that since February-2021, the applicant is behind the bar and co-accused have already been released on bail. He would further submit that after filing the chargesheet, there is no substantial progress in the trial and applicant being

permanent resident of Jamnagar Town easily available at the time of trial and so far merits of case is concerned, he submitted that the fire arms injuries suffered by the victim does not attract Section 307 of the Indian Penal Code and even otherwise, since long, the injured has already been discharged from the hospital.

4. In view of the aforesaid contentions, when there is no *prima facie* case made out for the offences punishable under Section 307 and trial will not conclude in near future, keeping the applicant behind the bar would not serve any purpose and therefore, considering the personal liberty, as enshrined under Article 21 of the Constitution of India, this is a fit case for exercising the jurisdiction.
5. Opposing the application, learned APP Ms.Shah has contended that this is a third successive bail application and it has been filed in a casual manner as there is no change in facts situation and therefore, this successive bail application may not be entertained.
6. Having heard learned counsels for the respective parties and on perusal of the case papers, it appears that the applicant by using fire arms caused the injuries to the victim and he had acted at the behest of one Jayesh Ranpariya against whom, series of offences having been registered with the different police stations of Jamnagar and since long, he absconded and presently, he is in U.K. (London) and through his henchman like applicant running the extortion business. The bail application filed after chargesheet came to be rejected by the Sessions Court concerned on 13.07.2021. Against the order of the

Sessions Court, the application filed before this Court was withdrawn by the applicant on 13.09.2022. While withdrawal of the bail application before this Court, the applicant accused granted liberty to file application for separation of his trial. It is relevant to refer the said order which reads thus:

“Heard Mr.Pratik Barot, Mr.Premal Rachh and Ms.Monali Bhatt, learned advocates for the respective parties.

It is submitted that the applicant is in jail since 01.02.2021 and there is no progress in the trial as the principal accused is absconding.

Learned advocate for the applicant, on instructions, does not press this application and seeks permission to file an application for separation of trial, etc. before the court concerned. Present application is disposed of as not pressed with aforesaid liberty. In the event of filing the application, the Court concerned shall decide the same in accordance with law. Rule is discharged. The Court has not examined the merits of the case.”

7. The applicant, instead of filing an application of separation of trial, again moved an application for bail on 19.04.2023. The Sessions Court concerned vide its order dated 27.04.2023 rejected the said bail application observing that the earlier bail application was rejected on merits and thereafter, in absence of any change in circumstances, the bail application cannot be entertained.

8. In view of the aforesaid background facts, this Court is of the considered view that after withdrawal of the earlier bail application before this Court, there is no material change in the facts situation and therefore, the successive bail application without change in circumstances is not maintainable. The Sessions Court has also taken a same view while rejecting the bail application and has not committed any error while disposing the bail application. The applicant had withdrawn the earlier bail application as he wants to file an application for separation of the trial before the Court concerned, but he did not avail his remedy and within a span of five to six months, there is no any material change in the facts situation. The grounds raised in the application for bail had been considered earlier by the Court concerned and therefore, no any fresh ground or material change exists to entertain the present bail application. It is a settled position of law that successive bail applications are permissible under the change circumstances and the change circumstances must be substantial one which has direct impact on the earlier decision and not merely a cosmetic changes which are of little or no consequences. The Apex Court in the case of Kalyanchandra Sarkar Vs. Rajesh Ranjan (2005 (2) SCC 42) while dealing with the issue of successive bail application has observed that without change in the circumstances, the subsequent bail application would be deemed to be seeking a review of the earlier rejection order which is not permissible under the criminal law. The Apex Court has further observed that while entertaining such

consequent bail application, the Court has a duty to consider the reasons and grounds on which the earlier bail application was rejected and what are the fresh grounds which persuade it warranting the evaluation and consideration of the bail application afresh and to take a view different from one taken in the earlier application. The applicant herein has not pleaded in his application that there is inordinate delay in the trial of the case. He could have filed an application for separation of the trial, but somehow he did not do it before the Court concerned. In such circumstances, the successive bail application, without material change in the facts situation, is not maintainable.

9. For the aforestated reasons, the application stands **dismissed**. The learned Sessions Court concerned shall proceed with the trial and by exercising its discretion, may pass an order for separation of the trial, so that the trial can proceed further.

(ILESH J. VORA,J)

Rakesh