

- (a) not take undue advantage of liberty or misuse liberty;
- a (b) not act in a manner injurious to the interest of the prosecution;
- (c) surrender passport, if any, to the lower Court within a week;
- (d) not leave the State of Gujarat without prior permission of the Sessions Judge concerned;
- b (e) mark presence before the concerned Police Station on alternate Monday of every English calendar month between 11.00 a.m. and 2.00 p.m., for a period of six months or till the conclusion of the trial, whichever is earlier;
- (f) furnish the present address of his residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall
- c not change the residence without prior permission of this Court;
- (g) not enter the village where the victim is residing till the final decision of the Sessions Case.
- d 11. The authorities will release the appellant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter.
- e 12. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.
- f 13. 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 appellants on bail.
14. The appeal is allowed in the aforesaid terms. Direct Service is permitted.

Result:- Appeal Allowed.

**ABC 2019 (III) 107 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT
(G.R.Udhwani, J.)**

R/Criminal Misc. Application No. 9744 of 2019
Decided on 28 June 2019

h **VANRAJSINH HIRABHAI CHAVADA** - Applicant(s).

Versus

STATE OF GUJARAT - Respondent(s).

Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 439 – Successive bail application – entertaining – in a case

where travesty of justice especially when principal factor relevant to be gone into – for considering the bail application is heavily loaded in favour of the bail to the accused – When such contention was not raised earlier – Principles of resjudicata being inapplicable to criminal jurisprudence – When question of liberty of a person is involved – the administration is prima facie found to be illegally duplicating the FIR – the court would rather entertain the successive bail. (Para 5)

(B) Code of Criminal Procedure, 1973 – Section 439 – Successive bail application – Duplication of FIR – Contention not raised in previous bail – not fatal to the case of the accused. (Para 5)

(C) Code of Criminal Procedure, 1973 – Section 439 – Regular Bail – Duplicate vis-à-vis antecedents of the accused – Duplicate FIR being a weighty circumstance, would override circumstances like the antecedents of the accused. (Para 5)

Law of relief:- Duplicate FIR is heavily loaded in favour of the petitioner and denial of bail would result into the travesty of justice.

Held:- It is needless to say that normally successive bail application would not be entertained; however in a case where travesty of justice especially when principal factor relevant to be gone into for considering the bail application is heavily loaded in favour of the bail to the accused and when such contention was not raised earlier; and principles of resjudicata being inapplicable to criminal jurisprudence and when in such circumstances question of liberty of a person is involved and the administration is prima facie found to be illegally duplicating the FIR (supra), the court would rather entertain the successive bail in peculiar facts of the case.

For the reasons supra, the submissions by the learned Additional Public Prosecutor that in the previous bail, the duplication of the FIR could have been argued and having not raised such a contention, the petition is not maintainable, requires to be rejected. The basis of the duplicate FIR is prima facie infirm. Duplicate FIR could not have been filed and no arrest could have been made on that basis. Such a weighty circumstance, would override circumstances like the antecedents of the accused; which are of course not fully substantiated. This Court at this stage may recall the observations in the case of **Ramesh Chander Singh (supra)**, wherein after denial of the bail to the accused for three times, the case came to be considered in his favour on the fourth occasion, for the reason that all the factors relevant to be gone into for considering the bail application were heavily loaded in favour of bail to the accused. The

a factor like duplicate FIR is heavily loaded in favour of the petitioner in the instant case and denial of bail would result into the travesty of justice in the peculiar facts stated (supra). In the opinion of this Court, this case squarely falls within the observations made in the case of **Ramesh Chander Singh (supra)**. (Para-5)

b **Counsel:-** For Applicant(s): Shivani Rajpurohit, Adv.
For Respondent(S): Mr L R Poojari, Adv.

Cases Referred:-

Altaf@ Altaf Basi S/o. Jabbar Khan Sardar Khan Pathan v. State of Gujarat, (Para-3)

ORDER

c **G.R.UDHWANI, J.:** -1. Rule. Learned APP waives service. Heard learned advocate for the applicant and learned APP for the respondent- State.

d 2. This successive bail application is filed under section 439 of the Code of Criminal Procedure,1973 in respect of the offences punishable under sections 420, 465, 467, 468, 472 & 120B of the Indian Penal Code, for which FIR came to be registered at C.R.No.I 87 of 2014 with Surendranagar City Police Station. Previous bail application being Criminal Misc. Application No.20791 of 2017 came to be withdrawn by the accused after charge-sheet.

e 3. From the rival submissions, it appears that first FIR being Crime Register No.I 110 of 2010 arising out of the same cause as in the present case, was also registered against the petitioner with the same Police Station. Learned counsel for the petitioner has pointed out
f from the FIR being C.R.NoI-87 of 2014 that nucleus of the offence resides in the previously registered FIR. It is submitted that post the order dated 11/02/2011 passed in Criminal Misc. Application No.15710 of 2010, Civil Suit No.75 of 2012 came to be filed with
g learned Principal Senior Civil Judge, Surendranagar, in connection with the subject matter of the previously filed FIR and therein certain documents were produced; signatures whereon were doubted and were alleged to be forged. Only on the ground that the said documents contained forged signature which fact is yet to be verified
h by the FSL as submitted by the learned Additional Public Prosecutor; it appears that on the same subject matter, present duplicate FIR came to be filed as if separate offence has taken place. It appears from the very perusal of the FIR being C.R.No.I 87 of 2014 that the alleged crime mentioned therein is inseparably connected with earlier FIR (supra). There is no whisper in the later FIR to show that a separate

offence unconnected with FIR (supra) was committed. The petitioner would therefore be entitled to bail on this ground alone. a

To buttress the submission that in the peculiar facts aforesaid, successive bail application would be maintainable, learned counsel for the petitioner has relied upon para 10.2 of the judgement delivered by this Court in **Criminal Misc. Application No.30392 of 2017 (Altaf @ Altaf Basi S/o. Jabbar Khan Sardar Khan Pathan v. State of Gujarat)** decided on 23/03/2018, wherein this Court has issued directions as under: b

"10.2 The fact that in the FIR and in one or two statements of the witnesses, the petitioner has been attributed with instigation as detailed above and in statements of two witnesses named above, he is not so implicated, also cannot be disputed. In the light of the above facts, it would be appropriate to quote the observations made by the Hon'ble Supreme Court in **Ramesh Chander Singh (supra)** In para 10 thus: c d

"10. The counsel for the respondent pointed out that on three previous occasions the bail had been declined to the very same accused and as there was no change in the circumstances, the appellant officer should not have considered the fourth bail application as well. Of course, in the previous bail applications, many of the contentions raised by the accused were considered, but an accused has the right to file bail application at any stage when undergoing imprisonment as an undertrial prisoner. The fact that the two other accused had already been enlarged on bail was a valid reason for granting bail to accused Ram Pal. Moreover, accused Ram Pal had been in jail for one year as an undertrial prisoner and the charge-sheet had already been filed. In our opinion, if accused Ramp Pal were to be denied bail in these circumstances, it would have been a travesty of justice especially when all factors relevant to be gone into for considering the bail application were heavily loaded in favour of bail to accused Ram Pal." (empahsis supplied) e f g

It was contended that apart from the fact that the present FIR could not have been filed on mere collection of an additional document during the civil proceedings, the transaction in question impugned in the previously filed FIR was not agitated earlier. There is great deal of substance in this argument. Prima facie, when in the same case in previously registered FIR, accused has been granted liberty by this Court vide order dated 11/02/2011 passed in Criminal Misc. Application No.15710 of 2010, he would be entitled to bail in this case as well. h

a Learned counsel invited attention of this court to para 18 of Altaf @ Altaf Basi with a submission that full particulars of the so called antecedents were not submitted in compliance with the said directions:

"18. The casual and cavalier approach of the investigator warrants the following general directions:

b 1. The brief facts of the case cited as antecedents against a person, in few lines pointing out how, when and the extent and the provisions of law the accused is implicated in and whether or not he is admitted to bail or whether he is acquitted or convicted should be mentioned.

c 2. The gist of the details above stated and other related necessary material implicating the person in the antecedents should be supplied to him preferably in advance by two days to enable him to explain the same.

d This order shall be circulated to all the police stations of the State of Gujarat, by the learned Public Prosecutor."

e 4. It is submitted that in fact, if full particulars were given, it would be revealed that in most of the case the accused has earned acquittal. Learned Additional Public Prosecutor would however contend that the history of the petitioner is rich with 27 cases and therefore, liberty should be denied to him as the liberty may be misused by him. Learned Additional Public Prosecutor has submitted that in compliance with the directions in Altaf @ Altaf Basi (supra) the affidavit-in-reply shall be filed during the course of the day. However, he has placed on record photo copy of a statement containing details of the cases against the petitioner. Having perused the said statement, this Court does not find the full compliance with the aforementioned directions in as much as no particulars in relation to antecedents as directed by this Court are furnished with full details. In as many as seven cases, no current status is mentioned; whereas in as many as four cases the petitioner has been acquitted and three cases were not proved against him.

h Learned Additional Public Prosecutor has submitted that while in police japta in connection with FIR being C.R.No.I 50 of 2016 registered at Wadhvan Police Station, the accused escaped the custody on 28/11/2017 and he was arrested by the police on 06/03/2019. Offence in both the FIRs being the same; practically the petitioner can be said to be on bail on the subject matter of even later FIR since he was already granted bail on the same subject as indicated (supra).

Learned Additional Public Prosecutor also relied upon the conduct of the accused recorded in the application for temporary bail

being Criminal Misc. Application No.2434 of 2007 with Criminal Misc. Application no.24316 of 2017 where the accused was found to be indulging into the act of forging the birth certificate in order to avail temporary bail. For the said conduct; concededly the accused is facing a criminal case. For the reasons aforesated, the accused cannot be refused bail on this ground as well. a

5. It is needless to say that normally successive bail application would not be entertained; however in a case where travesty of justice especially when principal factor relevant to be gone into for considering the bail application is heavily loaded in favour of the bail to the accused and when such contention was not raised earlier; and principles of resjudicata being inapplicable to criminal jurisprudence and when in such circumstances question of liberty of a person is involved and the administration is prima facie found to be illegally duplicating the FIR (supra), the court would rather entertain the successive bail in peculiar facts of the case. b
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For the reasons supra, the submissions by the learned Additional Public Prosecutor that in the previous bail, the duplication of the FIR could have been argued and having not raised such a contention, the petition is not maintainable, requires to be rejected. The basis of the duplicate FIR is prima facie infirm. Duplicate FIR could not have been filed and no arrest could have been made on that basis. Such a weighty circumstance, would override circumstances like the antecedents of the accused; which are of course not fully substantiated. This Court at this stage may recall the observations in the case of **Ramesh Chander Singh (supra)**, wherein after denial of the bail to the accused for three times, the case came to be considered in his favour on the fourth occasion, for the reason that all the factors relevant to be gone into for considering the bail application were heavily loaded in favour of bail to the accused. The factor like duplicate FIR is heavily loaded in favour of the petitioner in the instant case and denial of bail would result into the travesty of justice in the peculiar facts stated (supra). In the opinion of this Court, this case squarely falls within the observations made in the case of **Ramesh Chander Singh (supra)**. e
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6. Hence, this application is allowed and applicant is ordered to be released on bail in connection with I-CR No.87 of 2014 registered with Surendranagar City Police Station on executing a bond of Rs.10,000/- (Rupees Ten Thousand only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall; h

- a (a) not take undue advantage of liberty or misuse liberty;
 (b) not act in a manner injurious to the interest of the prosecution;
 (c) surrender his passport, if any, to the lower court within a week;
 (d) not leave the territory of India without prior permission of the Sessions Judge concerned;
- b (e) mark presence in the concerned police station once in a calendar month.

- c (f) furnish the present address of residence along with the proof to the Investigating Officer concerned and also to the trial court at the time of execution of the bond and shall indicate change of residential address if any to the trial court/ investigator, as the case may be.

7. The competent authority will release the applicants only if he is not required in connection with any other offence for the time being.

- d 7.1 If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to take appropriate action in the matter.

7.2 Bail bond to be executed before the lower court having jurisdiction to try the case.

- e 7.3 It will be open for the concerned Court to delete, modify and/or relax any of the above conditions in accordance with law.

7.4 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 applicants on bail.

- f 8. Rule made absolute to the aforesaid extent. Direct service is permitted.

Result:- Bail granted.

**ABC 2019 (III) 113 GUJ
 ACQUITTAL & BAIL CASES
 HIGH COURT OF GUJARAT
 (Sonia Gokani, J.)**

R/Special Criminal Application No. 3004 of 2018

Decided on 12 June, 2019

- h **MANGILAL GANGARAM MALI** - Applicant(s).

Versus

STATE OF GUJARAT & ORS. - Respondent(s).

Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 167 – Indian Penal Code, 1860 – Sections 406, 420, 467, 468,