twenty thousand only) subject to the following terms and conditions that he shall:

a

(a) not take undue advantage of his liberty or abuse his liberty;

(b) maintain law and order;

(c) surrender his passport, if any, to the lower court, within a week and if he does not possess any passport, then he shall make a declaration to that effect before the trial court;

b

(d) If during the pendency of the criminal appeal any changein his residential address, permanent or temporary, takes place, then the applicant shall intimate the same to the trial court as well as the concerned Police Station.

c

8. Bail before the trial court having jurisdiction.

9. However, it is made clear that any observations made while deciding these bail application will not affect merits of the case at the time of final arguments.

d

10. Rule is made absolute accordingly. Direct service is permitted.

***Result*:-** Application allowed.

ABC 2016 (I) 343 GUJ

ACQUITTAL & BAIL CASES

e

HIGH COURT OF GUJARAT

(A.J. Desai, J.)

Criminal Misc.Application (For Regular Bail) No.4146 of 2016

Decided on 5 April, 2016

f

SANJAY RAGHUNATHPRASHAD GUPTA ***- Appellant(s).***

Versus

STATE OF GUJARAT ***- Respondent(s).***

g

Law Covered*:- *Code of Criminal Procedure, 1973 — Section 439 — Indian Penal Code, 1860 — Sections 409, 418, 465, 467, 468, 471, 120-B and 114— Prevention of Corruption Act, 1988— Section 13 (1) (c), d (ii) — Successive bail application — Investigation over — the applicant is behind bar for almost 11 months — Investigation is over — Court has not even framed charge — 12 accused & about 100 witnesses — voluminous record of documents — the applicant was released on temporary bail & has surrendered in Jail in time — never

h

tried to misuse the liberty granted to him — Held, it is not a heinous crime wherein there is an apprehension that he may tamper with the prosecution witnesses or is danger to the Society at large — case is based on documentary evidences — which is required to be proved by the prosecution at the time of trial —Bail granted.(Para 18,19&20) a

Facts:- *State of Gujarat established a Company for speed transportation by establishing Metro Rail between Ahmedabad and Gandhinagar. The State thought it fit to appoint an experienced Administrative Officer as Chairman of the Company and the applicant, an ex -IAS Officer, came to be appointed as Chairman of the said Company. He was authorized to appoint different type of Officers to execute the project.* b

After the discontinuation of the applicant as the Executive Chairman of the company, new management took over the Company. The management found that the accused, by creating forged documents like bogus purchase orders, bogus bills etc. made payments to several companies though no work was carried out by those companies. c

The FIR was lodged for the offences punishable u/ss 409, 418, 465, 467, 468, 471, 120-B and 114 of IPC and Section 13 (1) (c), d (ii) of PC Act. The Application for bail was dismissed by the Sessions Court. d

The applicant preferred Application before the Hon'ble Gujarat High Court and requested to release him on regular bail, learned Public Prosecutor submitted that since it was a huge project and number of accused are involved and there would be possibility of gathering some more material, the investigation is being continued and the State needs some time to file supplementary charge-sheet. The request was accepted. The applicant was, therefore, permitted to withdraw the said application with a liberty to file fresh application directly before this Court on completion of the said period. Hence the present application was filed. The application was allowed and the applicant was ordered to be released on bail. e f

Law of relief:- ***Bail granted on the ground that the crime was not heinous wherein there is an apprehension that the accused may tamper with the prosecution witnesses or is danger to the Society at large.*** g

Held:- The undisputed facts is that the applicant was Chairman of MEGA and was responsible for the transaction being a head of the Company. However, the investigation is over and time was granted to the State Government for further investigation which has also been completed and supplementary charge-sheet has been submitted on 27.1.2016. In the case of Sanjay Chandra v. Central h

Bureau of Investigation, (Supra), the Hon'ble Supreme Court has dealt with most important judgments of the Hon'ble Supreme Court itself and has released the accused who were facing charges for 2G Spectrum scam wherein public exchequer has lost thousands of crores of rupees. (Para 18)

It is pertinent to note that the applicant is behind bar since 14.5.2015 and investigation is over. The Court has not even framed charge in the matter. There are about 12 accused and about 100 witnesses and there is voluminous record of documents which are relied upon by the prosecution. It is also pertinent to note that the applicant was released on temporary bail and has surrendered in Jail in time. It is not the case that he has ever tried to misuse the liberty granted to him. (Para 19)

It is true that the applicant is facing charges under Section 409 of the Indian Penal Code for which sentence of imprisonment of life is prescribed. However, if the applicant was not facing the charges under the Prevention of Corruption Act (which is again challenged by way of separate petition and pending before this Court), the case could have proceeded before the learned Magistrate. In my opinion, it is not a heinous crime wherein there is an apprehension that he may tamper with the prosecution witnesses or is danger to the Society at large. The case is based on documentary evidences which is required to be proved by the prosecution at the time of trial. Several paragraphs quoted in the decision in the case of Sanjay Chandra v. Central Bureau of Investigation (Supra) are not reproduced since the same are quoted from the judgment referred herein above. (Para 20)

Counsel:- ***For Appellant(s):*** *Mr N D Nanavaty, Senior Counsel Assisted By Mr Ravish D Bhatt, Advocate.*

For Respondent(s): *Mr Mitesh Amin, Public Prosecutor Assisted By Mr L. B. Dabhi, APP.*

Cases Referred:-

1. *Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40= ABC 2012 (I) 72 SC. (Para 10)*
2. *Dr. Vinod Bhandari v. State of Madhya Pradesh reported in 2015 AIR SCW 1052. (Para 14)*
3. *Kailash Ramkishan Gupta v. State of Gujarat and another, Special Leave to Appeal (Criminal) No.6795 of 2013. (Para 14)*
4. *Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 2 SCC 42. (Para 10&18)*

5. *Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240. (Para 10&18)*
6. *Vaman Narain Ghiya v. State of Rajasthan, (2009) 2 SCC 281. (Para 10&18)*
7. *State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21* etc. *(Para 10&18)*
8. *Gurcharan Singh and Ors. Vs. State AIR 1978 SC 179. (Para 20)*

ORDER

A.J. DESAI, J.: - 1. By way of the present successive bail application under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), the applicant - accused has prayed to release him on regular bail in connection with FIR bearing I C.R. No.3 of 2015 registered with CID Crime Gandhinagar Zone Police Station, Dist. Gandhinagar for the offences punishable under Sections 409, 418, 465, 467, 468, 471, 120-B and 114 of Indian Penal Code and Section 13 (1) (c), d (ii) of Prevention of Corruption Act, 1988.

2. The brief facts arise from the record are as under :-

2.1 That one Rajesh K. Mehta, Additional Collector and Chief Administrative Officer of Metro-link Express for Gandhinagar and Ahmedabad Company Limited (hereinafter referred to as 'MEGA') lodged an FIR with Gandhinagar Zone Police Station on 1.4.2015 against seven accused persons named therein, inter alia, alleging therein that those accused named in the FIR have committed above referred offences describing the manner and method by which they have committed fraud and have misappropriated huge amount to the tune of Rs.113.22 Crores.

2.2. By Resolution dated 7.5.2009, State of Gujarat established a Company under the provisions of the Companies Act, 1956 for speed transportation by establishing Metro Rail between Ahmedabad and Gandhinagar. The said Company MEGA was registered on 4.2.2010 under the Companies Act, 1956. While establishing such Metro Rail between Ahmedabad and Gandhinagar, the State of Gujarat thought it fit to appoint an experienced Administrative Officer as Chairman of the Company. Since the applicant, an ex-IAS Officer who had worked as an Administrative Officer with the State of Gujarat for considerable long time of 17 years, he came to be appointed as Chairman of the said Company on 8.4.2011. He was appointed as Executive Chairman of MEGA from 4.8.2011 upto 29.8.2013.

2.3 The applicant was authorized to appoint different type of Officers to execute the project. Accordingly, he appointed several

officers who are named in the FIR as accused persons. They were like Senior Managers, General Managers, Assistant Managers, Civil Engineers etc. in different type of wings of the Company.

2.4 Subsequent to August 2013 i.e. discontinuation of the applicant as the Executive Chairman of MEGA, new management took over the Company. The management found that the accused who have been named in the FIR, by creating forged documents like bogus purchase orders, bogus bills etc. made payments to several companies though no work was carried out by those companies. The State of Gujarat established a special unit for examining this aspect in which technical experts like Chief Engineer and other officers were included. The said unit examined the payments made by MEGA to several companies and physically verified the site upon which some work was alleged to have been carried out. Prima facie, it was found that MEGA had raised Rs.194.56 Crores to different persons against 2849 bills for excavation of sand supplying filling material etc. for the work done towards 20,67,438.00 Cubic Meters and MEGA company paid Rs.147.11 Crores. The technical unit found that instead of 20,67,438.00 Cubic Meters, only 9,42,057 Cubic Meters land was excavated and there was huge difference of 11,24,867 Cubic Meters and for the said difference, the amount comes to Rs.113.22 Crores which was misappropriated by all the accused.

2.5 Pursuant to the lodgment of the FIR, investigation begun and accused who are named in the complaint came to be arrested. The present applicant came to be arrested by the Investigating Agency on 14.5.2015 since prima facie material was found involving him in the said payments.

2.6 On completion of the investigation and before the expiry of the prescribed period for submission of charge-sheet, the Investigating Agency submitted its charge-sheet against the present applicant on 7.8.2015 before the competent Court.

2.7 On completion of the investigation, the present applicant filed an application under Section 439 of the Code being Criminal Misc. Application No.3230 of 2015 before the learned City Sessions and Special ACB Judge, Ahmedabad for releasing him on bail during the pendency of the trial. The learned Additional Sessions Judge, Ahmedabad by his judgment and order dated 31.8.2015 dismissed the said application.

3. The applicant preferred Criminal Misc. Application No.19352 of 2015 before this Court and requested to release him on regular bail. The matter was heard. Mr. Mitesh Amin, learned Public Prosecutor submitted that since it was a huge project and number of accused are involved and there would be possibility of gathering some more material, the investigation is being continued and the State needs some time to file supplementary charge-sheet. He had requested to grant six weeks time for submitting supplementary charge-sheet. By oral order dated 17.12.2015, this Court disposed of the said application permitting the Investigating Agency to carry on with the investigation and complete the same within a period of six weeks. It was further directed that the Investigating Agency shall supply the documents gathered during further investigation. The applicant was, therefore, permitted to withdrew the said application with a liberty to file fresh application directly before this Court on completion of the said period.

4. Hence this application.

5. Pursuant to the notice issued by this Court, Mr. Mitesh Amin, learned Public Prosecutor has appeared for respondent - State and opposed this application.

6. Mr. N.D. Nanavaty, learned Senior Counsel assisted by Mr. Ravish D. Bhatt appearing for the applicant would submit that the charges levelled against the present applicant is that amount is alleged to have been paid to different companies for the work not done by them. However, it is not the case of the prosecution that the amount has been paid against work not at all done. He would submit that the report submitted by the unit established by the Government would be subject to examination by the Court at the time of trial. He would submit that there is a prima facie conclusion by the technical unit that there is difference of about 11.24 Lac Cubic Meters with regard to excavation / filling work which can be established only after examining those officers as witnesses by the prosecution. He would further submit that as far as bills, purchase orders etc. are concerned, the same are in possession of the prosecution and the entire case is based on documentary evidence and, therefore, there is no reason to apprehend that the applicant may tamper with the evidence, if he is released on bail. He would submit that the statement of several witnesses recorded by the Investigating Agency only suggests that some cash amount were exchanged at one Hotel of

Gandhinagar of which the petitioner is having share in the company under which the said Hotel has been established. He would submit that this is oral way of witnesses having no supporting evidence.

7. He would further submit that since the applicant is facing charges under the provisions of Prevention of Corruption Act, 1988, the matter is being tried by Special Judge under the said Act. He would further submit that the applicant has already preferred an application under Section 482 of the Code for quashment of the charges levelled against him under the provisions of the Prevention of Corruption Act which is pending before the Coordinate Bench. He would submit that the said application has been preferred mainly on the ground that the applicant is not covered under the provisions of the Corruption Act. He would submit that rest of the offences are triable by learned Magistrate.

The applicant was subjected to remand way back in the month of May, 2015 for a period of five days and is behind bar since more than 10 months and trial is likely to take some time. Therefore, the present application may be considered.

8. In alternate to the above submissions, he argued that even if some prima facie case is made out against the applicant, he may not be kept behind bars for a long period since the trial has yet not commenced and even charge is not framed by the learned Sessions Judge. He would submit that by catena of decisions, the Hon'ble Supreme Court, while considering a case under Section 439 of the Code, has laid down a principle that before a conviction, a person should not be kept behind bars unless, if the prosecution establishes that there is danger of accused absconding or flee and would not be available at the time of trial if he is released on bail, and character behaviour means position and standing of the accused likelihood of offence being repeated, reasonable apprehension of the witnesses being tampered with etc; which is not the case of the prosecution since no such affidavit has been filed before this Court. He would submit that the case is entirely based on documentary evidence and there would be no question of tampering with the witnesses or any documents. He would submit that the applicant was released on temporary bail by this Court on several occasions and has surrendered in time before the Jail authority and it is not the case of the prosecution that he has ever tried to tamper with the evidence in whatsoever type of it.

9. He would further submit that there are about 12 accused arraigned in the case and about 100 witnesses have been cited by the prosecution and there is voluminous record and, therefore, the trial is likely to take long time. Therefore, the case of the applicant may be considered since he is behind bars since almost one year.

10. In support of his submissions, he has relied upon a decision of the Hon'ble Supreme Court in the case of ***Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40= ABC 2012 (I) 72 SC*** and submitted that the Hon'ble Supreme Court while releasing the accused wherein 2G Spectrum Scam of thousands of crores of rupees was involved, has after considering number of decisions like ***Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 2 SCC 42, Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240, Vaman Narain Ghiya v. State of Rajasthan, (2009) 2 SCC 281*** etc. as well as in the case of ***State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21*** etc. has held that while considering a petition for grant of bail in a name of non-bailable offence, the Court is duty bound to examine all these aspects and can be released on bail on imposing suitable conditions and his movement can be restricted. He would submit that the applicant is not facing any charge which can be termed as heinous crime. Therefore, his application may be considered and be released on bail. He would further submit that except the present applicant, all other accused have been enlarged on regular bail on completion of investigation. He would submit that all the co-accused have been enlarged on bail.

11. Apart from the above submissions, he would submit that the applicant was Director of number of Companies which are either close or the properties of such Companies have been mortgaged. Therefore, he is unable to raise any fund so that he can deposit some amount to show his bonafides. However, he would submit that he and his family members are shareholders of 99.94% of a Company, namely, M/s. Happy Family Township Limited. The Company is worth about Rs.7 Crores and the Company is prepared to pledge or offer as security or submit the original property deed of one of its property i.e. on land situated at Matriz No.383, Survey No.238/10 and 238/11 at village Varca- Salcete, Dist. South Goa, Goa - 403 721 and is ready to file an undertaking that the said property shall not be transferred till further orders passed by this Court. He would further submit that the Company has accordingly authorized one of the shareholders having 0.02% to file such undertaking before this Court.

He would further submit that the applicant is ready and willing to deposit an amount of Rs.1 Crore before the Trial Court within a reasonable time. He, therefore, would submit that the application be allowed.

12. On the other hand, Mr. Mitesh Amin, learned Public Prosecutor appearing for the respondent - State would submit that the applicant is king pin of the entire scam. Having worked with the State of Gujarat for 17 years as an IAS officer, huge responsibility was handed over to him for installation of important Project which would have helped speedy public transporting between capital of Gujarat Gandhinagar and Metro city Ahmedabad. Though the applicant has discontinued his office as an IAS officer, having found him eligible for carrying out such a huge task, the State had full trust in him and, therefore, was appointed as Chairman of the Government Company which was established for the aforesaid work. He would submit that the intentions of the applicant, from the beginning of becoming Chairman, was to usurp the Government money by illegal means and, therefore, he had appointed his own employees or those persons of his own confidence who can keep the transactions secret and huge money can be misappropriated by using different type of tactics. He would submit that the applicant is heading a big Company, namely, Neesa Group. He was aware that by creating bogus Companies and keeping the Directors of Neesa Group itself, the money from the MEGA company can easily be transferred and, therefore, he floated such six bogus Companies and about 31.12 Crores of Rupees have been paid to those companies of MEGA wherein almost all Directors are of Neesa group.

13. By taking me through the statement of one Chitrang Mukeshbhai Pandya, he would submit that the applicant, immediately after becoming Chairman of the MEGA Company, arranged a meeting with other co-accused who had either worked with him or were close friends of him. The statement suggests that huge cash transactions were being made through the present applicant from July 2012 onwards and by Demand Draft, the amounts were paid in those bogus six Companies. Similar are the statements of other witnesses.

14. By taking me through the statement of one Ramesh Kantibhai Makwana, he would submit that the present applicant has collected an amount of Rs.50 Lacs towards bribe for preparing bogus

invoices with regard to the sand. He would submit that the applicant has collected an amount of Rs.22 Crores by way of forged transportation in the name of one Sun Roadlines. In support of his submissions, he has relied upon statement of witnesses, namely, Ahmedbhai Chhotubhai Shaikh, Kaushikbhai Prahladbhai Patel, Kumar Ranjitsingh Satyadevsingh etc. He would further submit that about 49.85 Crores of Rupees has been collected from various vendors / suppliers and deposited the same in the accounts of about 27 Companies belonging to Neesa Group. He would further submit that Rs.39.47 Crores were deposited in 17 Companies belonging to Neesa Group. The applicant in connivance with the other accused created several bogus bills for supply of materials and received the money to the tune of Rs.79.51 Crores mainly in the Company belonging to Neesa Group. He has also relied upon statements of one Rasendu Prabhulal Vora, a Chartered Engineer and Government Valuer who has stated that though he has not certified the completion certificates, the same were produced before MEGA for which an amount has been paid by the applicant to his own Companies. He would submit that total amount siphoned away by the applicant is about Rs.212 Crores which may rise in future since the investigation is going on. He would submit that it is a systematic fraud committed by the applicant who is a public servant and he was working in capacity of a public servant being the Chairman of Company established and fully owned by the State of Gujarat. He would submit that the applicant is facing charges for the offence punishable under Section 409 of Indian Penal Code for which sentence is prescribed upto imprisonment for life or may extend to 10 years. He would submit that since the applicant is facing charges under Prevention of Corruption Act, the trial is going to be conducted by the Special Judge and, therefore, there are all possibilities that the trial may end within short time. He would submit that there is a great loss to the public exchequer and the applicant who was acting as a public servant and who was entrusted with huge funds and all powers, has dishonestly misappropriated the amount and subsequently, converted the same for his own use since the said amount has been transferred to his own Companies. Therefore, he is facing a serious charges which would not entitle him for any reliefs as prayed for. He would submit that the ratio laid down by the Hon'ble Supreme Court in the case of Sanjay Chandra (Supra) would not be applicable since the accused of the said case were facing charges for those offences for which maximum

punishment provided was upto 7 years. By relying upon the decision of the Hon'ble Supreme Court in the case of ***Dr. Vinod Bhandari v. State of Madhya Pradesh reported in 2015 AIR SCW 1052 (VYAPAM Case)*** would submit that the Hon'ble Supreme Court after considering the ratio laid down in the case of Sanjay Chandra v. Central Bureau of Investigation has held that considering the scam therein, each bail application is required to be considered on its own merits and has refused to release the accused on bail though the offences were triable by the learned Magistrate. He has also relied upon an unreported decision dated 4.9.2014 of the Hon'ble Supreme Court in the case of ***Kailash Ramkishan Gupta v. State of Gujarat and another, rendered in Special Leave to Appeal (Criminal) No.6795 of 2013*** and submitted that the application may be dismissed.

As far as submission with regard to deposit the original documents with regard to the Company and to transfer the same, Mr. Amin would submit that the papers of Company cannot be permitted to deposit, though the applicant might have major share in the Company.

15. I have heard learned advocates appearing for the respective parties and I have gone through the statements of witnesses relied upon by the Public Prosecutor. I have also gone through some of the documents which suggest that the amount has been transferred to Companies either sister-concern or floated by the Directors of the Neesa Group of Company wherein the applicant is having major share.

16. The statement of Chitrang Mukeshbhai Pandya suggests that one of the co-accused, namely, Rajesh Bhatt (who has been enlarged on regular bail) used to bring huge amount of cash and was asked by the applicant to prepare demand drafts which were deposited in the Company belonging to Neesa Group. The statement of Rajesh Mishra, prima facie, does not help the prosecution. In the statement of one Jignesh Shah, he has stated about the transaction took place with regard to the payment at the instance of the present applicant. The statement of one Patanjali J. Mishra who is working as Executive Engineer, prima facie, suggests that the Agencies to whom the amount has been paid by MEGA at the instance of the applicant, no work has been carried out by the said Agencies. The statement of Ramesh K. Makwana who is a businessman suggests that he had paid Rs.50 Lacs in cash to the present applicant. However, prima facie,

there is no evidence to the same. The statement of Ahmedbhai Chhotubhai Shaikh through whose account, some transactions have taken place, however, suggests that some cash amounts were withdrawn from his account which was earlier deposited at the instance of Kaushik Patel allegedly on behalf of the present applicant. Several allegations have been made by other witnesses on the same line against the present applicant. The report prepared by the Committee does suggests that though the amount has been diverted from MEGA, the work against the same has not been done.

17. In view of the above facts, now the question remains is whether the applicant is required to be enlarged or not.

18. The undisputed facts is that the applicant was Chairman of MEGA and was responsible for the transaction being a head of the Company. However, the investigation is over and time was granted to the State Government for further investigation which has also been completed and supplementary charge-sheet has been submitted on 27.1.2016. In the case of Sanjay Chandra v. Central Bureau of Investigation, (Supra), the Hon'ble Supreme Court has dealt with most important judgments of the Hon'ble Supreme Court itself and has released the accused who were facing charges for 2G Spectrum scam wherein public exchequer has lost thousands of crores of rupees. The Hon'ble Supreme Court has, after considering the decisions of ***Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 2 SCC 42, Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240, Vaman Narain Ghiya v. State of Rajasthan, (2009) 2 SCC 281, State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21*** has ultimately held that the applicant can be released on bail by imposing appropriate conditions.

19. It is pertinent to note that the applicant is behind bar since 14.5.2015 and investigation is over. The Court has not even framed charge in the matter. There are about 12 accused and about 100 witnesses and there is voluminous record of documents which are relied upon by the prosecution. It is also pertinent to note that the applicant was released on temporary bail and has surrendered in Jail in time. It is not the case that he has ever tried to misuse the liberty granted to him.

20. It is true that the applicant is facing charges under Section 409 of the Indian Penal Code for which sentence of imprisonment of life is prescribed. However, if the applicant was not facing the charges

under the Prevention of Corruption Act (which is again challenged by way of separate petition and pending before this Court), the case could have proceeded before the learned Magistrate. In my opinion, it is not a heinous crime wherein there is an apprehension that he may tamper with the prosecution witnesses or is danger to the Society at large. The case is based on documentary evidences which is required to be proved by the prosecution at the time of trial. Several paragraphs quoted in the decision in the case of Sanjay Chandra v. Central Bureau of Investigation (Supra) are not reproduced since the same are quoted from the judgment referred herein above. However, in the background of aforesaid facts, relevant paragraph Nos.41, 42, 43 and 44 of the said decision are reproduced herein below :-

> "41. This Court in ***Gurcharan Singh and Ors. Vs. State AIR 1978 SC 179*** observed that two paramount considerations, while considering petition for grant of bail in non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure of the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.
>
> 42. When the under-trial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is : whether the same is possible in the present case.
>
> 43. There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the 5 documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence.

We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet." a

21. As far as the decision in the case of Dr. Vinod Bhandari v. State of Madhya Pradesh (Supra) relied upon by learned Public Prosecutor Shri Amin is concerned, I am of the opinion that the Hon'ble Supreme Court in light of the facts of that case has declined b the bail since it was a question of high magnitude indicating illegal admission to large number of undeserving candidates to the medical courses by corrupt means. Paragraph 17 of the said judgment reads as under :-

"17. In the light of above settled principles of law c dealing with the prayer for bail pending trial, we proceed to consider the present case. Undoubtedly, the offence alleged against the appellant has serious adverse impact on the fabric of the society. The offence is of high magnitude indicating illegal admission to large number of undeserving candidates d to the medical courses by corrupt means. Apart from showing depravity of character and generation of black money, the offence has the potential of undermining the trust of the people in the integrity of medical profession itself. If undeserving candidates are admitted to medical courses by corrupt means, not only the society will be deprived of the e best brains treating the patients, the patients will be faced with undeserving and corrupt persons treating them in whom they will find it difficult to repose faith. In these circumstances, when the allegations are supported by material on record and there is a potential of trial being adversely influenced by grant f of bail, seriously jeopardising the interest of justice, we do not find any ground to interfere with the view taken by the trial Court and the High Court in declining bail."

22. Further, unreported decision of the Hon'ble Supreme Court in the case of Kailash Ramkishan Gupta v. State of Gujarat and g another (Supra) relied upon by Mr. Amin, in my opinion, is not applicable in the facts of the present case.

23. Considering the entire facts and circumstances of the case and the papers of investigation and charge-sheet and supplementary h charge-sheet, I am of the opinion that the application requires consideration. Hence, the application is allowed and the applicant is

ordered to be released on bail in connection with FIR bearing I C.R. No.3 of 2015 registered with CID Crime Gandhinagar Zone Police Station, Dist. Gandhinagar, on executing a bond of Rs.5,00,000/- (Rupees Five Lacs only) with two sureties of Rs.2,50,000/- each to the satisfaction of the trial Court and subject to the conditions that he shall;

[a] not take undue advantage of liberty or misuse liberty;

[b] not act in a manner injuries to the interest of the prosecution;

[c] surrender passport, if any, to the lower court within a week if not seized by the concerned authority;

[d] not leave the State of Gujarat without prior permission of the Sessions Judge concerned;

[e] as agreed and submitted by Mr. N.D. Nanavaty, learned Senior advocate for the applicant, the applicant shall deposit an amount of Rs.50,00,000/- (Rupees Fifty Lacs Only) before the learned Trial Court within a period of two weeks from today and another Rs.50,00,000/- (Rupees Fifty Lacs) before the learned Trial Court within a period of two weeks thereafter and shall file an undertaking to the above effect within a period of one week from today before this Court;

[f] mark presence at the concerned Police Station on every Monday of each English Calendar month for a period of one year and thereafter any day of the first week of every English calendar month, till the trial is over, between 11.00 a.m. and 2.00 p.m.;

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

[h] the Investigating Agency shall inform all the International Airports within the Country of India about this order passed by this Court that the applicant is not permitted to leave Gujarat without prior permission of this Court;

24. The Authorities will release the applicant 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. 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. 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.

25. Rule made absolute to the aforesaid extent. Direct service is permitted.

Result:- Bail granted.

ABC 2016 (I) 358 GUJ
ACQUITTAL & BAIL CASES

HIGH COURT OF GUJARAT

(A.J. Desai, J.)

Criminal Misc.Application (For Regular Bail) No.18334 of 2015
Decided on 6 November, 2015

NASIRKHAN MUNAVARKHAN BAHADURKHAN PATHAN - Appellant(s).

Versus

STATE OF GUJARAT - Respondent(s).

Law Covered:- Indian Penal Code, 1860 — Sections 120(B), 201, 294(B), 323, 328, 354, 376, 384, 506(2)& 507— Information Technology Act — Sections 25 (1)(b)(a) & 67 (1) — Age of prosecutrix — 21 yrs — Education qualification of prosecutrix — Post Graduation — continued her relationship with the accused for considerable long time i.e. from 2004 to 2014 — FIR was lodged in 2015 — no discovery or recovery of electronic gadgets like Handycam etc. — No discovery of the ornaments — Applicant along with the prosecutrix had visited several Hotels during this period & booked rooms — not raised any alarm about the rape on any of the occasions — Co-accused with similar accusations had been considered for bail —Alleged abettor had been enlarged on anticipatory bail — Held, fit case to exercise the discretion to enlarge the applicant on bail. (Para 7)

Facts:- *The prosecutrix who was doing her post graduation, before 10 years of lodgment of FIR, came into contact with the applicant herein. He took her at his residence on the premise that it was his birth day, and there, she was asked to drink some cold drink pursuant to which she became unconscious. After some time, when she gained consciousness, she found*