

Mr Oza learned APP has taken this Court through the detailed judgment of the trial Court, however, finding recorded by the learned trial Judge in the judgment will not permit this different view than that taken by the learned trial Judge. Even in the present appeal, nothing is produced or pointed out to rebut the conclusion of the trial Court. Even looking to the medical evidence, Id. APP is not able to bring home the charge levelled against the accused and persuaded this Court to take a different view than that taken by the learned trial Judge in view of the catena of decisions of the Apex Court and the latest decision of the Apex Court in the case of *State of Punjab v. Madan Mohan Lal Verma, reported in (2013) 14 SCC 153*. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

20. In the above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondent of the charges leveled against them. I find that the findings recorded by the trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence find no reasons to interfere with the same.

21. In the result, the present appeal is hereby dismissed. R & P to be sent back to the trial Court, forthwith. Bail bond and bail, if any, stands cancelled. Surety also, if any given, stands discharged.

Result:- Appeal dismissed.

**ABC 2016 (I) 507 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT**

(A.J. Desai, J.)

Criminal Misc.Application (For Cancellation Of Bail) No. 4497 of 2016
Decided on 22 February, 2016

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

Versus

KETUL RAMESHBHAI DHAMECHA **- Respondent(s).**

Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 439(2) – Regular Bail – Application for cancellation – Indian Penal Code, 1860 – Sections 376, 493, 406, 420 & 114 –

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989—Section 3(2)(5) – Educated Prosecutrix – studying in medical college – developed relationship with the accused – continued for more than 2½ years – Observation by trial Court – since accused refused to marry, the same would not cover the offence of rape – Held, Considering the role played by the accused, the Court below rightly granted Bail – Application dismissed. (Para 4) a

(B) Code of Criminal Procedure, 1973—Section 439(2) – Bail – Cancellation of – Held, bail once granted should not be cancelled in a mechanical manner – without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial – Dolatram and others V/s. State of Haryana – relied (Para 5) b

(C) Criminal Jurisprudence – Code of Criminal Procedure, 1973—Section 439(2) – Power of the Appellate Court under – Regular Bail – Cancellation of – Held, when the accused has been released on regular bail – & has not committed any breach of conditions imposed by the court – there are no reasons to exercise the power u/s 439(2). (Para 5) c

Law of relief:- *The refusal of the accused to marry would not cover the offence of rape.*

Held:- *I have perused the FIR and judgement and order impugned in the application. There are orders passed by this Court releasing several similarly situated accused on regular bail. It is undisputed fact that the prosecutrix who is studying in medical college had developed relationship with the respondent - accused in February 2013 which continued for more than two and half years. Prima facie, the observation made by the trial Court that since the respondent - accused had refused to marry on the ground best known to the prosecutrix and the accused, the same would not be cover the offence of rape. Considering the role played by the accused, I am of the opinion that the learned Additional Sessions Judge has rightly exercised his power under Section 439 of the Code of Criminal Procedure. (Para 4)* d

Considering the ratio laid down by the Honble Apex Court in various decisions, it is clear that the powers of the Appellate Court are different than granting the bail by trial court. In case of Dolatram and others V/s. State of Haryana, reported in 1995(1) SCC 439, Honble Supreme Court has held that bail once granted should not be e

- cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. Therefore, I am of the opinion that when the respondent original accused has been released on regular bail and has not committed any breach of conditions imposed by the court, there are no reasons to exercise my power under section 439(2) of the Code of Criminal Procedure and cancel the regular bail granted in favour of the respondent- original accused. (Para 5)

Cases Referred:-

Dolatram and others V/s. State of Haryana, reported in 1995(1) SCC 439. (Para 5)

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ORDER

- A.J. DESAI, J.:** - 1. By way of present application under Section 439(2) of the Code of Criminal Procedure 1973, the applicant - State of Gujarat has challenged the judgement and order dated 20.11.2015 passed by learned 14th (Ad-hoc) Additional Sessions Judge, Vadodara below Exhibit 7 in Criminal Misc. Application No. 2525 of 2015 by which the learned Additional Sessions Judge, Vadodara, by exercising his power conferred under Section 439 of the Code of Criminal Procedure, has released the respondent - original accused on bail on certain conditions, with regard to FIR registered at J. P. Road Police Station of Vadodara being C.R.No.190 of 2015 for the offence under Sections 376,493, 406, 420 and 114 of Indian Penal Code and Section 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The brief facts of the present case are that the complainant, who is aged about 25 years had lodged an FIR being C.R.No.190 of 2015 before the J. P. Road Police Station, District: Vadodara for the offence punishable under Sections 376, 493, 406, 420 and 114 of Indian Penal Code and Section 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 on 07.11.2015. It is alleged in the said FIR that since, the prosecutrix was studying in medical college where her brother was studying, she came in contact with respondent - accused in the month of February 2013. She has developed relation with accused. It is also alleged that the prosecutrix was assured by the respondent - accused that after completion of their study, they would enter into marriage and, therefore, the prosecutrix has developed physical relationship. On 17.09.2015, the family members of the accused

came for engagement of the prosecutrix with the accused and started abusing language with regard to community of the prosecutrix. Since the respondent - accused has cheated the prosecutrix and under the pretext, the prosecutrix had entered into physical relationship with the accused, the said FIR came to be filed. The respondent - accused came to be arrested who filed the abovementioned application. a

3. The learned 14th (Ad-hoc) Additional Sessions Judge, Vadodara after examining the material on record passed reasoned order on 20.11.2015 below Exhibit 7 in Criminal Misc. Application No. 2525 of 2015 by which the learned Additional Sessions Judge, Vadodara, by exercising his power conferred under Section 439 of the Code of Criminal Procedure, released the respondent accused on certain terms and conditions. Hence, this application. b c

4. Learned Additional Public Prosecutor for the applicant - State of Gujarat would submit that the respondent - accused has committed an offence as alleged in the FIR. She would submit that the assurance was given by the respondent - accused to the prosecutrix that he would marry with the prosecutrix and under the said pretext, she had entered into physical relationship with the respondent - accused, which is offence of rape. She would submit that the present application may be allowed and the bail granted to the respondent - accused may be cancelled. d

4.1 I have perused the FIR and judgement and order impugned in the application. There are orders passed by this Court releasing several similarly situated accused on regular bail. It is undisputed fact that the prosecutrix who is studying in medical college had developed relationship with the respondent - accused in February 2013 which continued for more than two and half years. Prima facie, the observation made by the trial Court that since the respondent - accused had refused to marry on the ground best known to the prosecutrix and the accused, the same would not be cover the offence of rape. Considering the role played by the accused, I am of the opinion that the learned Additional Sessions Judge has rightly exercised his power under Section 439 of the Code of Criminal Procedure. e f g

5. Considering the ratio laid down by the Honble Apex Court in various decisions, it is clear that the powers of the Appellate Court are different than granting the bail by trial court. In case of *Dolatram and others V/s. State of Haryana, reported in 1995(1) SCC 439*, Honble Supreme Court has held that bail once granted should not be cancelled in a mechanical manner without considering whether any h

a supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. Therefore, I am of the opinion that when the respondent original accused has been released on regular bail and has not committed any breach of conditions imposed by the court, there are no reasons to exercise my power under section 439(2) of the Code of Criminal Procedure and cancel the regular bail granted in favour of the respondent- original accused.

b 6 In view of the above, the present application is meritless and the same deserves to be dismissed and is accordingly dismissed.

Result:- Application dismissed.

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ABC 2016 (I) 511GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

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(Rajesh H. Shukla, J.)

Criminal Appeal No. 1293 of 2011 With Criminal Appeal No. 1294 of 2011

Decided on 31 March, 2016

STATE OF GUJARAT

- Appellant(s).

Versus

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OSMAN @ BABO HABIBBHAI DAL

- Respondent(s).

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Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 378 – Appeal against Acquittal – Indian Penal Code, 1860 – Sections 504 & 506(2) – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Section 3(1)(10) – No specific statement of complainant about the abuse – No corroboration – Witnesses had come to the scene of offence subsequently – Place of incident – occurred at the house of the Complainant and not at the public place – Held, Necessary ingredients for offence u/s 504 & 506(2), IPC are also not established – Acquittal upheld – Indian Evidence Act, 1872 – Section 3 – relevant fact. (Para 11)

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(B) Code of Criminal Procedure, 1973 – Section 377 – Appeal for enhancement of the sentence – Indian Penal Code, 1860 – Section 324 – Bombay Police Act – Section 135 (1) – Conviction under – Nature of Injury – on the right thumb and right index finger – Observing manner, weapon used & injury – enhancement of sentence not considered – Appeal dismissed – Indian Evidence Act, 1872 – Section 3 – relevant fact. (Para 12)

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