

# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5431 of 2012

For Approval and Signature:

**HONOURABLE MR.JUSTICE M.R. SHAH**

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

**DEVENDRAPRASAD BHAGWANJI PANDYA - Applicant(s)**

**Versus**

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

**Appearance :**

MR RUSHABH R SHAH for Applicant(s) : 1,

MS JIRGHA JHAVERI ADDL.JPUBLIC PROSECUTOR for Respondent(s) : 1,

**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 29/06/2012**

## ORAL JUDGMENT

1.00. RULE. Ms.Jirgha Jhaveri, learned Additional Public Prosecutor waives the service of notice of rule on behalf of the respondent – State.

2.00. Present application under section 439 of the Code of Criminal Procedure has been preferred by the applicant

herein - original accused to release him on bail in connection with the First Information Report being CR No.I-29 of 2005 registered with Gandhinagar Zone CID Crime Police Station for the offences punishable under sections 406, 409, 420, 467, 471, 120B of Indian Penal Code.

3.00. Mr.Rushabh Shah, learned advocate appearing on behalf of the applicant has submitted that the applicant is in jail since last more than nine years and so far as the offence in question is concerned, he is in jail since 18/7/2007. It is submitted that despite the best efforts, the trial is not likely to be concluded and delay in trial is not attributed to the applicant at all. It is submitted that as such the applicant is in jail since last more than nine years in different cases of similar nature and in the offence in question, the applicant was formally arrested on 18/7/2007 and since then he is in jail and he is not released on bail for a single day. It is submitted by Mr.Shah, learned advocate appearing on behalf of the applicant that in all other offences registered against the applicant, the applicant has been released on bail by other courts as well as this Court. Submitting accordingly, it is requested to release the applicant on bail.

4.00. Ms.Jirgha Jhaveri, learned Additional Public Prosecutor appearing on behalf of the respondent – State has submitted that this is a successive bail application and looking to the offences alleged to have been committed by the applicant and the role attributed to the applicant, who can be said to be the main surviving accused, it is requested to exercise the discretion in favour of the applicant and not to release the applicant on bail.

5.00. Heard the learned advocates appearing on behalf of the respective parties. It is true that this is a successive bail application, however, it is not in dispute that the applicant is in jail since last more than 8 to 9 years and so far as the offence in question is concerned, the applicant is in jail since July, 2007.

5.01. It also appears that the trial is not likely to be commenced in near future, as subsequently investigating officer has added offences under the Prevention of Corruption Act, against which Revision Application is pending before the learned Sessions Court. It appears also that the delay in not commencing and in not concluding the trial cannot be attributed to the applicant at all as the applicant is in jail since many years. It is also required to be noted that even in the present case itself, the applicant is in jail since approximately five years. In other cases, the applicant is already released on bail with respect to the similar cases, pursuant to the judgement and orders passed in Criminal Misc.Application No.2145 of 2011 and other allied matters dtd.8/11/2011 as well as in Criminal Misc.Application No.3449 of 2012 and other allied matters dtd.20/4/2012.

5.02. Considering the aforesaid facts and circumstances and even considering the recent decisions of the Hon'ble Supreme Court in the case of **Sanjay Chandra Versus Central Bureau of Investigation**, reported in **(2012) 1 S.C.C. 40**, present application deserves to be allowed and the applicant is required to be released on bail.

6.00. In view of the above and for the reasons stated above, present application is allowed and the applicant is ordered to be released on bail in connection with the First Information Report being CR No.I-29 of 2005 Gandhinagar Zone, CID Crime Police Station on his executing a bond of Rs.25,000/- (Rupees Twenty-Five Thousand only) with one surety of the like amount to the satisfaction of the lower Court and subject to the conditions that he shall :

- (a) not take undue advantage of his liberty or abuse his liberty;
- (b) not act in a manner injurious to the interest of the prosecution;
- (c) maintain law and order;
- (d) mark his presence before concerned Police Station on first Saturday of every English calendar month between 9.00 a.m. and 2.00 p.m. till the trial arising out of the offence in question is concluded.
- (e) not leave the State of Gujarat without the prior permission of the Sessions Court concerned;
- (f) furnish the address of his residence at the time of execution of the bond and shall not change the residence without prior permission of this Court;
- (g) surrender his passport, if any, to the lower Court within a week.

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

8.00. Bail before the lower Court having jurisdiction to try the case. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

**[M.R. SHAH, J.]**

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