



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA



CRIMINAL PETITION NO. 5847 OF 2024

BETWEEN:

VAIBHAVARAJ UTSAV
S/O V RAJAMOHAN
AGE 32 YEARS,
R/O NO.81, GROUND FLOOR, 4TH MAIN,
PANCHASHEELA NAGAR,
NEAR MALAGALA BDA APARTMENT
MOODALPALYA,
BENGALURU - 560072

...PETITIONER

(BY SRI. MOHAMMED TAHIR, ADVOCATE)

AND:

STATE BY
CHANDRA LAYOUT P.S.,
REP. BY STATE PUBLIC PROSECUTOR
OFFICE AT HIGH COURT COMPLEX
OPPOSITE TO VIDHANA SOUDHA
BANGALORE - 560001.

...RESPONDENT

(BY SRI. HARISH GANAPATHI, HCGP)

THIS CRL.P IS FILED U/S.482 CR.PC. PRAYING TO 1. SET ASIDE THE ORDER DATED 17.05.2024 PASSED IN CRL.MISC.NO.3822/2024 BY THE HONBLE XXVII ADDL. CITY CIVIL AND SESSION JUDGE AT BANGALORE (CCH-09) AND HOLDING CONCURRENT CHARGE OF LXIX ADDL. CITY CIVIL AND SESSIONS JUDGE (CCH-70) BANGALORE CITY AT ANNEXURE-A AND ETC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:





ORDER

The petitioner is before this Court calling in question an order dated 17.05.2024 passed in Crl.Misc.No.3822/2024 by the Court of Sessions.

2. Heard the learned counsel Sri.Mohammed Tahir, appearing for the petitioner and the learned High Court Government Pleader Sri.Harish Ganapathi, appearing for the respondent.

3. Facts in brief, germane, are as follows:

A crime comes to be registered in Crime No.53/2021 against the petitioner for offences punishable under Sections 406, 465, 471 and 379 read with Section 34 of the IPC by one Dr.Kiran Kamala. The allegation is that the accused has misappropriated the funds of the organization and also thieved certain documents. The misappropriation was projected at Rs.1,08,50,000/- in the account of one Vimukthi Trust. The police after investigation have filed a charge sheet against the petitioner in C.C.No.31039/2021. The petitioner then applies to enlarge the regular. The petitioner then applies to be enlarged



on regular bail. The concerned Court grants regular bail, subject to certain conditions. The order granting bail reads as follows:

"

ORDER

Bail petition filed under Sec. 439 of Cr.P.C. by the Petitioner is allowed.

*Petitioner is ordered to be released on regular bail in Cr. No.53/2021 on executing personal bond for Rs.50,00,000/- with one surety for the likesum. **The accused shall furnish bank guarantee to the Trust to the tune of Rs. One crore after release from prison within 3 months on the following conditions.***

- 1. The Petitioner shall not tamper with the Prosecution witnesses either directly or indirectly in any manner.*
- 2. The petitioner shall appear before court regularly.*
- 3. The petitioner shall not abscond from the residence and should furnish the address proof to the concerned police*
- 4. He shall not involve in any kind of offence.*
- 5. He shall not leave the jurisdiction without prior permission of jurisdictional Magistrate in writing.*
- 6. He shall not leave the country and has to surrender his passport before the trial court*

If any of the above conditions violates the IO is at liberty to move for cancellation of bail."



The petitioner was directed to furnish a bank guarantee to the tune of Rs.one crore within three months after release from prison. The petitioner then files an application seeking modification of the order under Section 439(1)(b) of the Cr.P.C. The concerned Court on 23.01.2024 accepts the modification partially and disposes the matter by the following order:

"

ORDER

Petition filed by the petitioner u/sec. 439(1B) of Cr.P.C. is allowed in part.

The order passed in Crl.Misc. No.1388/2023 on the file of this Court dated 14.3.2023 is hereby modified.

The petitioner shall furnish bank guarantee to the Trust to the tune of Rs. 50 lakhs instead of Rs. One crore.

Condition No.6 of the bail order is hereby relaxed. The other conditions of the bail order remain intact."

Instead of Rs.one crore, the petitioner was directed to furnish a bank guarantee of Rs.50/- lakhs. This is again sought to be modified by filing an application under Section 439(1)(b) of Cr.P.C. before the concerned Court. The Court, rejects the said application by the impugned order and therefore, the petitioner is before this Court, in the subject petition.



4. The issue is whether the Court would have imposed a condition of furnishing of bank guarantee of whatever amount it is, while granting bail. The issue need not detain this Court for long or delve deep into the matter. The Apex answering an identical circumstance has held that asking for a bank guarantee or a condition of furnishing a bank guarantee, while granting bail, is illegal. The Apex Court in the case of ***Subhash Chouhan v. Union of India and another¹***, has held as follows:

" ***3. The challenge in this appeal has been made to the Order dated 21.06.2022 passed by the High Court of Chhattisgarh granting bail to the appellant subject to conditions. One of the conditions was that the appellant shall deposit a sum of Rs. 70 Lakhs under protest, in favour of the Principal Commissioner, CGST, Raipur within a period of 45 days from the date of his release. It is this condition, which is under challenge before us.***

4. Learned counsel appearing for the appellant submits that the condition to deposit Rs. 70 Lakhs within 45 days from the date of the release as a pre-requisite condition for the bail is not sustainable inasmuch as the First Information Report was in respect of wrongfully availing the Input Tax Credit of Rs. 6,95,32,472/.

5. It is further submitted that there is no final assessment in this regard under the GST Act. Hence it cannot be presumed that the appellant is under a legal liability to pay the said amount.

6. As an officer of this Court, Mr. K.M. Nataraj, learned ASG appearing for the Union of India/State has

¹ 2023 SCC Online SC 110



fairly stated that such a condition cannot be imposed while granting bail.

7. Considering the above facts and circumstances, in our considered opinion, the condition directing the appellant to deposit a sum of Rs. 70 Lakhs is not liable to be sustained and is hereby set aside.

8. The rest of the conditions in the impugned order are sustained."

In another case, **Anatbhai Ashokbhai Shah vs. State of Gujarat and another²**, the Apex Court has held as follows:

"2. Learned counsel for the parties are not at issue that the facts of this case are identical to one in Criminal Appeal No. 186 of 2023.

3. Since the facts are almost identical, we see no reason to deviate from the view taken in the said case vide judgment and order dated 20.01.2023.

4. Following the reasons given in the said judgment and order, we hereby provide that the condition directing the appellant to deposit a sum of Rs. 2 crores is not liable to be sustained and is hereby set aside.

5. The rest of the conditions in the impugned order are sustained.

6. The appeal accordingly, stands allowed to that extent. Pending application(s), if any, stand disposed of."

² 2023 SCC Online SC 227



In another case, ***Makhijani Pushpak Harish v. State of Gujarat***³, the Apex Court has held as follows:

"3. On being arrested on the basis of the complaint filed by the Superintendent (Prevention) of Central GST and Central Excise, Vadodara, for the offences punishable under sections 69, 132(1)(a) of the Central Goods and Services Tax Act, 2017 (for short, "CGST"), the appellant made an application under section 437 of the Code of Criminal Procedure, 1973 for seeking bail before the court of Chief Judicial Magistrate, Vadodara.

4. The bail was granted subject to the condition that the appellant submits a bank guarantee of an amount of Rs. 3 crores along with certain other conditions.

5. Aggrieved by the imposition of condition for deposit of bank guarantee, as a pre-deposit for a bail, the appellant approached the High Court by filing Criminal Miscellaneous Application No. 710 of 2023 which came to be disposed of by the order dated January 12, 2023* impugned herein, whereby the High Court modified the condition of furnishing bank guarantee of an amount of Rs. 3 crore by reducing it to Rs. 1.5 crore.

**** Reported as Makhijani Pushpak Harish v. State of Gujarat (2023) 115 GSTR 130 (Guj).***

6. Such pre-condition of deposit of an amount or furnishing a bank guarantee has been the subject matter of consideration by this court in a number of cases, where condition of pre-deposit has been held to be bad.

7. Reference may be made to an identical matter in Criminal Appeal No. 186/2023, Subhash Chouhan v. Union of India*, this court vide judgment dated January 20, 2023 set aside the order passed by the High Court imposing a condition of deposit while granting bail to the appellant therein.

³ 2023 SCC Online SC 1170



8. It is also pertinent to note that in the said case, the learned Additional Solicitor General appearing for the Union of India/State had fairly stated that such a condition cannot be imposed while granting bail. The statement made by the learned Additional Solicitor General is recorded in the judgment and order dated January 20, 2023.

9. The same view has been reaffirmed by this court in another similar case, Criminal Appeal No. 523/2023, Anantbhai Ashokbhai Shah v. State of Gujarat. vide judgment and order dated February 17, 2023.**

10. Facts of the present case being identical to the facts of the aforesaid two criminal appeals, we see no reason to deviate from the view taken in the aforesaid two cases."

In another case, **Karandeep Singh vs. CBI** ⁴ the Apex Court has held as follows:

" *The appellant in these proceedings assails a part of the order, comprising of conditions granting him bail. **One of the conditions imposed by the High Court is to the effect that the appellant is required to furnish a Bank Guarantee to the tune of Rs. two crores for being enlarged on bail. Both the orders under appeal carry identical condition.** There are certain other conditions specified in the impugned order passed on 22nd March, 2023 and 28th March, 2023 but the appellant has made out no grievance as regards those conditions. The appellant's argument is that such a condition is onerous.*

Learned counsel for the appellant has relied on a judgment of a Co-ordinate Bench delivered in Criminal Appeal No. 1193 of 2023 (Makhijani Pushpak Harish Vs. The State of Gujarat) in which 1 such a pre-condition of furnishing Bank Guarantee was held to be unsustainable. In that judgment, reference was made to an earlier decision of this Court in Criminal Appeal No. 186/2023 (Subhash Chouhan Vs. Union of

⁴ 2023 LiveLaw (SC) 482



India) delivered on 20.01.2023. In the light of the legal position explained in the aforesaid judgment of the co-ordinate Bench, we direct that the appellant shall not be required to comply with condition (1) contained in the orders of the High Court dated 22.03.2023 and 28.03.2023. Instead of the requirement of furnishing Bank Guarantee, we direct that the appellant shall furnish a bail bond for Rs. five lakhs in each of the two orders for bail, under appeal before us. Rest of the conditions contained in the orders impugned shall remain and would have to be complied with by the appellant for being enlarged on bail. The impugned orders dated 22.03.2023 and 28.03.2023 passed in Crl. Misc. Bail Application Nos. 12980 of 2023 and 12562 of 2023 are modified to the above extent."

5. The judgment in the case of ***Karandeep Singh*** (*supra*) was following the judgments of the Apex Court in the cases of ***Makhijani Pushpak Harish*** and ***Subhash Chouhan Vs. Union of India*** quoted (*supra*). The Apex Court clearly holds that direction to furnish a bank guarantee as a condition precedent for release on bail or continuance of bail, is on the face of it illegal. Therefore, the order of the concerned Court that directs the petitioner to furnish a bank guarantee, *albeit*, within three months after his release, is on the face of it illegal.

6. Learned counsel for petitioner would submit that bail bond of Rs.50/- lakhs is already furnished, in the light of



the order passed by the Court and likesum surety is also furnished.

7. Therefore, the fly in the ointment is the direction to furnish a bank guarantee. The Apex Court has held it to be illegal in the afore-quoted judgments. The said finding would become applicable to the facts of the case at hand and the condition of furnishing of bank guarantee is on the face of it illegal. This Court is coming across plethora of cases where the concerned Courts, while granting bail are imposing a condition that the accused should furnish a bank guarantee of any quantum. This is on the face of it illegal. Such orders being passed have generated lot of litigation. Therefore, I deem it appropriate to observe that the concerned Court shall not insist on furnishing of bank guarantee for release of the accused on grant of bail. Except this, the concerned Court would be free to impose any other legally tenable conditions.

8. For the aforesaid reasons, the following:



ORDER

- i) The criminal petition is allowed.
- ii) The order dated 17.05.2024 rejecting the application filed under Section 439(1)(b) of Cr.P.C., is set aside.
- iii) The application filed under section 439(1)(b) of Cr.P.C., by the petitioner is allowed.
- iv) The order directing furnishing of bank guarantee of Rs.50/- lakhs by the petitioner dated 23.01.2024 is set aside.
- v) All other conditions stipulated in the order granting bail dated 14.03.2023 remains intact except the aforesaid finding.

Ordered accordingly.

**Sd/-
JUDGE**

KG
List No.: 1 Sl No.: 28