



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER
CHARGESHEET) NO. 5242 of 2024**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE M. R. MENGDEY

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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LABHSHANKAR DURYODHAN MAHESHWARI

Versus

STATE OF GUJARAT

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Appearance:

MR. N.D.NANAVATI, SENIOR ADVOCATE with MR HARSHIL G
BHAVSAR(11263) for the Applicant(s) No. 1

MR RUTURAJ NANAVATI(5624) for the Applicant(s) No. 1

MR. CHINTAN DAVE, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY

Date : 22/08/2024

ORAL JUDGMENT

1. The Applicant has filed this Application under Section 439 of the Code of Criminal Procedure for enlarging the Applicant on Regular Bail in



connection with FIR being I - C.R. No. 7 of 2023 registered with A.T.S. Police Station, Ahmedabad for the offences punishable under Sections 121A, 123 and 120B of the Indian Penal Code ("IPC") and Sections 43, 66, 66F(1)(b) of the Information & Technology Act.

2. Heard learned Senior Advocate Mr. N.D.Nanavati appearing with learned Advocate Mr. Harshil G. Bhavsar for the Applicant, learned APP Mr. Chintan Dave for the Respondent – State.

3. Learned Senior Advocate Mr. N.D.Nanavati submitted that the Applicant is alleged to have committed offence punishable under Section 121A, 123 and 120B of IPC. However, upon perusal of the entire record, none of the ingredients for the aforesaid offences are made out against the present Applicant. He submitted that the present Applicant was the citizen of Pakistan. However, subsequently the Applicant has relinquished his Pakistani citizenship and has been conferred citizenship of India by the Government of India. The only role attributed to the present Applicant in commission of the offence is to the effect that he had received some simcard, which is alleged to have been transported by him to Pakistan. Except this no other overt act has been attributed to the Applicant in commission of the offence in question. He therefore submitted to allow the present Application and enlarge the present Applicant on regular bail subject to suitable conditions.

4. Learned Senior Advocate Mr. N.D.Nanavati has further submitted that recently the Hon'ble Apex Court in case of Jalaluddin Khan v. Union of India has reiterated the principle that the bail is the rule and jail is an exception. The Apex Court has further held that when a case is made out for grant of bail the court may not have any hesitation in granting bail. The allegations of the prosecution may be very serious but the duty of the courts is to consider the case for grant of bail in accordance with law. He therefore submitted that the



present being a fit case for grant of bail, without having regard to the seriousness of the allegations levelled against the Applicant, this court may exercise its discretion in favour of the Applicant for grant of bail.

5. Learned APP Mr. Chintan Dave has opposed the present Application contending that the present Applicant had obtained a simcard, which, subsequently, had been transported by him to Pakistan through his own sister. Before that, the Applicant had inserted the said simcard in the mobile phone of witness Vaibhav and a One Time Password ("OTP") for WhatsApp had been received in the mobile phone of the said Vaibhav which had been communicated by the Applicant to his counterpart in Pakistan, who, on the basis of the said OTP had activated a WhatsApp Account on another device on the simcard which had been supplied by the present Applicant. He therefore submitted that there is an active participation of the present Applicant in commission of the offence in question. He therefore submitted to dismiss the present Application.

6. Heard learned Advocates for the parties and perused the record. From the record it appears that on 3.4.2023, witness Santosh Kumar @ Sintu Sitaram Bhatiya, who was working in Airforce and was stationed at Airforce Station Kargil, Jammu & Kashmir, had received a WhatsApp message on his mobile phone from an unknown mobile number being 9054946792. In the said WhatsApp message, he was asked to download an APK file in his mobile phone. However, he could not download the said file in his mobile phone, and therefore, he had forwarded the said message to his wife on her mobile phone. Subsequently, it was found that the said file contained a Malware and was forwarded to the said witness Santosh with an intention to procure secret information as regards armed forces of India. On the basis of the information provided by the said witness Santosh, the inquiry was carried out and it was traced that the simcard bearing number 9054946792 i.e. the number from



which the witness Santosh had received WhatsApp message, had been procured by one Mohammed Saklen Umar Thaim, resident of Jamnagar. The said simcard had thereafter been delivered to the present Applicant. Upon receipt of the said simcard, the Applicant had asked witness Vaibhav to insert the said simcard in his mobile phone with an intention to procure the OTP for WhatsApp. After the OTP was received, the present Applicant had communicated the said OTP to his counterpart in Pakistan, who, on the basis of the said OTP had activated a WhatsApp Account on the instrument which was working in Pakistan, and thereafter, with the help of the said WhatsApp Account, the message in question was sent to witness Santosh asking him to download an APK file which contained a Malware. The record further reveals that after activation of the WhatsApp Account, the present Applicant had transported the simcard in question, to Pakistan, through his sister. The record also indicates that prior to attaining the Indian Citizenship, the Applicant was the citizen of Pakistan and has his roots in Pakistan.

7. Having regard to these facts, no case is made out. Hence, the Application is dismissed.

(M. R. MENGDEY,J)

J.N.W