

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL) NO. 2 of 2023
In R/CRIMINAL APPEAL NO. 424 of 2020=====
CHANDANJI @ GATO CHHANAJI THAKOR
Versus
STATE OF GUJARAT
=====

Appearance:

THROUGH JAIL for the PETITIONER(s) No. 1

MR RONAK RAVAL, APP for the RESPONDENT(s) No. 1
=====CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE M. R. MENGDEY

Date : 22/09/2023

IA ORDER

(PER : **HONOURABLE MR. JUSTICE A.S. SUPEHIA**)

1. The present case is an eye opener. The convict-Chandanji @ Gato Chhanaji Thakor has filed the present application seeking regular bail through jail. Such application was filed by him on 05.08.2023, which is forwarded to the Registry of this Court vide communication dated 11.08.2023 written by the Deputy Superintendent of Ahmedabad Central Jail.

2. When the matter was listed yesterday, learned advocate Mr.Soni appearing for the applicant-convict has invited attention of this Court to the order dated 29.09.2020 passed in Criminal Misc. Application (for suspension of sentence) No.1 of 2020 in the captioned appeal and has submitted that this Court, after passing a comprehensive order, had already released the applicant on regular bail by suspending

his sentence under the provision of Section 389 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.).

3. The matter was ordered to be listed today and learned APP was directed to take necessary instructions as to why the applicant was still incarcerated in jail despite the order dated 29.09.2020 passed by the Coordinate Bench of this Court. Registry of this Court was also directed to give the details with regard to communication of the order dated 29.09.2020 releasing the applicant on regular bail.

4. Today, Ms.Shweta Shrimali, Superintendent of Jail, Ahmedabad Central Jail is present before this Court. The communication dated 22.09.2023 written by her is ordered to be taken on record along with the statement of the applicant.

5. The jail records are also produced before this Court. As per the report dated 22.09.2023 of the Superintendent of Jail, after the order was passed by the Coordinate Bench releasing the applicant on regular bail on 29.09.2020 on furnishing personal bond of Rs.20,000/- and two surety, the Registry sent an E-mail on 03.12.2020 to the Sessions Court, Mehsana and Ahmedabad Central Jail however, due to COVID-19 pandemic, the said E-mail was not noticed by the jail authority and the order passed by this Court was not implemented. It is further reported that no

communication was received by learned advocate Mr.Soni, who was representing the applicant and it is only when the present application was listed, the jail authority came to know about the order passed by the Coordinate Bench. Registry has also produced the E-mail dated 03.12.2020 with the attachment of the order passed by the Coordinate Bench.

6. Learned APP, upon instructions of Ms.Shweta Shrimali, Superintendent of Jail, Ahmedabad Central Jail, has submitted that the attachment of the order passed by this Court releasing the applicant on bail could not be opened. It is submitted that due to these circumstances, the applicant was not released on regular bail.

7. The aforesaid facts reveal that due to the remissness on the part of the jail authorities, the applicant, though was released by this Court on regular bail vide order dated 29.09.2020 passed in Criminal Misc. Application No.1 of 2020 in the captioned appeal, remained incarcerated in the jail. During his incarceration period, his jail remarks show that he was released on temporary bail and furlough on few occasions also. The applicant, though was released and could have enjoyed his freedom, was forced to remain in jail only because no attention was paid by the jail authorities to contact the Registry or Sessions Court with regard to the order

passed by this Court. Thus, there is a serious lapse on the part of the jail authorities.

8. Today, it is informed that after completing necessary formalities, the applicant is released yesterday. At this stage, it would be apposite to refer to the order passed by the Apex Court on 31.03.2023 in SLP (Criminal) No.4 of 2021 and SLP (Criminal) No.529 of 2021 in the case of Re Policy Strategy for Grant of Bail Vs. State. Some of the directions, which are issued by the Apex Court with regard to the under trials prisoners and convicts, who are incarcerated in jail and granted bail, are as under:

"9. We call upon the Government of India to discuss this issue with NALSA so that necessary directions, if any, can be passed. Learned ASG would obtain instructions in that behalf by the next date. With a view to ameliorate the problems a number of directions are sought. We have examined the directions which we reproduce hereinafter with certain modifications:

"1) The Court which grants bail to an undertrial prisoner/ convict would be required to send a soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent on the same day or the next day. The Jail Superintendent would be required to enter the date of grant of bail in the e-prisons software [or any other software which is being used by the Prison Department].

2) If the accused is not released within a period of 7 days from the date of grant of bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release.

3) NIC would make attempts to create necessary fields in the e-prison software so that the date of grant of bail and date of release are entered by the Prison Department

and in case the prisoner is not released within 7 days, then an automatic email can be sent to the Secretary, DLSA.

4) The Secretary, DLSA with a view to find out the economic condition of the accused, may take help of the Probation Officers or the Para Legal Volunteers to prepare a report on the socio-economic conditions of the inmate which may be placed before the concerned Court with a request to relax the condition (s) of bail/surety.

5) In cases where the undertrial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties.

6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider whether the conditions of bail require modification/relaxation.

7) One of the reasons which delays the release of the accused/convict is the insistence upon local surety. It is suggested that in such cases, the courts may not impose the condition of local surety."

9. Paragraph No.2 of the aforesaid directions suggest that the Apex Court has directed that if the accused is not released within a period of seven days from the date of grant of the bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA, who may depute Para Legal Volunteers or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release. The Secretary, DLSA, with a view to find out the economic condition of the accused, may take help of the Probation Officers or the Para Legal Volunteers to prepare a report on the socio-economic conditions of the inmate which may be placed before the concerned Court with a request to relax the

conditions of bail/surety. It is further directed that in cases where the under trial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties. It is further directed that if the bail bonds are not furnished within one month from the date of grant of bail, the concerned Court may *suo moto* take up the case and consider whether the conditions of bail require modification / relaxation, and one of the reasons which delays the release of the accused/convict is the insistence upon local surety. It is suggested that in such cases, the courts may not impose the condition of local surety.

10. It appears that the Apex Court is still examining the matter however, the aforesaid directions are issued only for welfare of the prisoners/convicts who have obtained bail but are not released.

11. In the present case, the Registry of this Court had categorically informed the jail authorities about the order passed by this Court releasing the applicant on regular bail. It is not the case that such E-mail was not received by the jail authorities. It is the case of the jail authorities that necessary action could not be taken in view of the COVID-19 pandemic and though they have received the E-mail,

they were unable to open the attachment. It is also noticed that though the E-mail was sent to District Sessions Court, Mehsana, no efforts were made by the Court to see that the order, which is passed by the Division Bench of this Court releasing the convict on bail, is appropriately implemented and no follow-up was taken until yesterday. The order was passed on 29.09.2020 and the convict has been released yesterday on 21.09.2023.

12. Considering the plight of the applicant, who has remained in jail despite the order of this Court due to the negligence on the part of the jail authorities, though he has already released yesterday, we are inclined to grant compensation for his illegal incarceration in the jail for almost three years. The applicant is aged about 27 years and he has already undergone, as per the jail remarks, more than 5 years. Hence, in the interest of justice and in order to see that the applicant is appropriately compensated for the negligence of the jail authorities, due to which he was constrained to remain in jail, we are directing the State to grant him compensation of Rs.1,00,000/- (Rupees One lac). The same shall be paid within a period of 14 days. Registry is directed to communicate this order to the District Sessions Court, Mehsana also.

13. It appears that the District Legal Services Authority (DLSA), who is assigned such duty to

identify the cases, has also failed to point out the order to the jail authorities. Looking to the seriousness of the issue, we deem it proper to direct all the DLSAs to undertake necessary exercise and collect the data of the under trial prisoners/convicts, in whose favour the orders are passed releasing them on bail but are not released. The DLSA shall collect the reasons for their not having been released either for want of surety or non-execution of the jail bonds or for any other reason.

15. In order to see that the aforesaid directions are complied with, including payment of compensation to the applicant, the matter is ordered to be listed on **18.10.2023**.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(M. R. MENGDEY, J)

NVMEWADA/S-2