

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC.APPLICATION****(FOR TEMPORARY BAIL)****NO. 5578 of 2015****With****CRIMINAL MISC.APPLICATION NO. 5581 of 2015**

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NARAYAN ALIAS NARAYAN SAI
ASHARAM ALIAS AASHUMAL HARPALANIApplicant

Versus

STATE OF GUJARAT

....Respondent

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Appearance:

MR N. D.NANAVTI, SR. ADVOCATE with

MS RITU R GURU, ADVOCATE with

MR YASH NANAVATI, ADVOCATE for the Applicant

MR L B DABHI ADDITIONAL PUBLIC PROSECUTOR

for the Respondent State

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CORAM: HONOURABLE MR.JUSTICE PARESH UPADHYAY**Date : 16/04/2015****ORAL ORDER**

1. The applicant prays for temporary bail.
2. The applicant is in judicial custody at Lajpore Central Jail, Surat in connection with two different offences being (i) C.R. - I No.31 of 2013 registered with the Jahangirpura Police Station, Surat City for the offences punishable under Sections 376(2)(k) (f), 377, 354, 357, 342, 346, 143, 147, 148, 149, 506(2) and

120(B) of the Indian Penal Code, and (ii) C.R. - I No.37 of 2013 registered with the D.C.B. Police Station, Surat for the offences punishable under Sections 213, 214, 217 and 120(B) of the Indian Penal Code and Sections 7, 8, 9, 12 and 13(1)(d) of the Prevention of Corruption Act, 1988.

3. Learned senior advocate for the applicant has submitted that, the mother of the applicant needs to be operated for her cervical spine as well as lumbar spine disorders. It is submitted that, the applicant's mother is not hospitalised at present, however Medical Certificate from the Sterling Hospital, Ahmedabad dated 11.03.2015, in this regard is on record. It is stated that, the father of the applicant is also not available at present. This Court has thought it proper not to record reasons for that. Suffice it to note that, according to learned advocate for the applicant, the applicant being the son is required to attend his mother. It is submitted that, the applicant is ready to abide by any condition, that may be imposed by this Court. It is requested that the applicant be granted temporary bail for a period of four weeks.

4.1 Mr. Dabhi, learned Additional Public Prosecutor has vehemently opposed this application.

4.2.1 Learned APP has taken this Court through the affidavit in reply dated 14.04.2015. Apprehension is shown by referring to Para : 9 of the said affidavit, which reads as under.

"9. I say and submit that the present applicant's conduct is not good. Though he was in police custody or judicial custody, the offence was registered against the

applicant for destroying the evidence. The present applicant had tried to give a bribe to the Police Officer and pursuant to that offence being C.R. - I No.37 of 2013 was registered at DCB Police Station, Surat under Sections 213, 214 of the Indian Penal Code and under the Prevention of Corruption Act. In this offence Rs.8,10,00,000/- have been recovered by the Police Authority."

4.2.2 Explaining the above referred offence, it is also submitted that, in investigation, it was also found that the applicant has provided for huge budget to 'deal with police officers and judiciary'.

4.3 It is also submitted that, in the event the applicant is enlarged on temporary bail, it may lead to disturbance in law and order situation. It is further submitted that, according to the State, the applicant has not only attempted influencing the witnesses, but to some extent even eliminating them. There are thousands and lakhs of disciples, who may create difficulties for the State. It is submitted that cause shown by the applicant is not such that the presence of the applicant may be considered inevitable. It is also submitted that, the applicant could move the Court below as well for this, and therefore on the ground of alternative remedy also, this application be not considered.

4.4 Without prejudice to the above contentions, it is submitted that the applicant be put to stringent conditions, so that no untoward incident occur.

5.1 Having heard learned advocates for the respective parties and considering the totality, this Court finds that, in view of the medical certificate, which is on record, the genuineness of which is not even doubted by the State, the cause shown by the applicant is accepted to be genuine. The same is also accepted to be a good ground to consider the request of the applicant for temporary bail. However the apprehension shown by the State is also accepted to be well founded and the same also needs to be addressed appropriately.

5.2 Before going into that balancing exercise, it is noted that there is apprehension of the State that in view of huge budgetary provision, allegedly having been made by the applicant to bribe the police officers, grant of even temporary bail, may lead to untoward incident. Though not expressed in so many words, indication is also made that attempt may be made to approach even the judicial officers. It is this concern which needs to be addressed first. Let the message go very loud and clear to the society that neither the police force nor the judiciary as an institute can be seen as a commodity having some price tag. Neither of these two institutes can afford to be seen so weak that grant of temporary bail to the applicant would be an irreversible situation for the State. At this juncture, it is recorded that learned senior advocate for the applicant has strong reservation against even this allegation, and this Court also clarifies that, these observations may not be construed as this Court having accepted the said allegation against the applicant to be true.

5.3 It is in above situation, the contention of the State, not to entertain this application on the ground of alternative remedy, is rejected. In the peculiar circumstances, asking the applicant to avail alternative remedy first, would be seen as this Court shirking its responsibility. That responsibility can not be and is not disowned by this Court.

6. While considering this application on merits, the concern shown by the State is also accepted in totality. Not only the concern of the State is well founded, it also needs to be addressed by this Court appropriately. On behalf of the applicant it is already stated that, he be kept in police surveillance of the strength and rank as may be decided by the appropriate authority of the Government, at his own cost. It is also stated on behalf of the applicant that, there is no insistence that he will go to his Ashram at Ahmedabad, however since he is being considered for being enlarged on temporary bail, he be not required to go back to barracks every evening.

7. Considering the totality and for the reasons recorded above, the following order is passed.

7.1 The applicant is granted temporary bail for a period of three weeks from the date of his actual release, on the following conditions.

7.2 A team of Police Officers / Police Officials, of the strength and rank, as may be decided by the Director General of Police, Gujarat State, shall be with the applicant, all throughout, for the period during which he is out of judicial custody. (i.e. the

number of police officers / officials and the rank of those officers / officials would be decided by the Director General of Police.) This would be at the cost of the applicant.

7.3 The said team shall be with the applicant, not only during the day time, but shall also be with the applicant, at the very place at which the applicant would stay at night. Except for very personal privacy, as may be accepted by the Head of the said team, the applicant shall be in the direct view of the said team.

7.4 The applicant shall intimate to the Director General of Police, in advance, the address at which he will stay for this period at Ahmedabad. If there is any suggestion of the said Authority in that regard, the applicant shall change the said place, as per the suggestion of the Director General of Police. The said address shall, thereafter, not be changed, except with the prior approval of the State Authorities.

7.5 The applicant shall not stay at, or go to his Ashram at Motera, Ahmedabad, or to any other Ashram.

7.6 The applicant shall not be permitted to go to any other place except from the place of his stay to the hospital, which is indicated to be Sterling Hospital at Ahmedabad (near Drive-in-Cinema).

7.7 In the event, any law and order problem is created by the applicant, directly or indirectly, or by any of the disciple of the applicant, during this period, the temporary bail granted by this Court vide this order, shall stand cancelled and the

applicant shall be taken to the Ahmedabad Central Jail immediately, and thereafter he shall be lodged back to the Lajpore Central Jail, Surat, where at present he is kept. This shall be informed to this Court on the next working day.

7.8 In the event, the applicant is not lodged back to the jail on expiry of the period granted by this Court, the team of the police officers / officials shall be personally held responsible for that and shall be exposed to the consequences thereof, as may be decided by the State, in accordance with law or by this Court.

7.9 There shall not be any extension of temporary bail period.

7.10 Keeping in view the apprehension shown by the State Authorities and with a view to see that, the challenge, if any to this order remains meaningful to the State Authorities, it is directed that this order shall be effective from 04.05.2015.

(PARESH UPADHYAY, J.)

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