

ORDER BELOW EXH.1 IN CRIMINAL CASE NO. _____

(1) Perused the record. The matter is of the year _____ and the offence alleged against the accused are punishable under Section _____ of IPC, which are summons triable in nature. The record indicates that the accused is the resident of _____. The matter is at the stage of service of process upon the accused since _____. The record further indicates periodically processes have been issued against the accused (Exh. _____) The endorsements thereon indicate that whereabouts of the accused not known and the accused is not traceable. It is also pertinent to note the Court had while issuing the processes also taken care to see that sufficient time is available to the process-serving agency and all due attempts are made to serve the process upon the accused. However, fact remains that the presence of the accused could not be secured.

(2) At this stage, it is advantageous to refer to the observations made by Hon'ble High Court of Bombay in the case of Mulchand Motilal Rak State of Maharashtra 1996 (1) BomCR 316. It has been observed in the said judgment that "Section 258 of the Code which empowers to the proceedings in certain cases is intended to meet with certain situations where the presence of accused persons cannot be secured or presence of any important witness cannot be secured by the prosecution, which is necessary for the trial of the case. Therefore, where the Magistrate does not find it possible to dispose of the matter by adopting normal procedure contemplated by the Code for one reason or other as hereinabove stated in such situation it would be open to the Magistrate to stop further proceedings of the case. Section 258 of the Code can be resorted to when the special or unusual circumstances exist, such as non-appearance of accused before the Court for considerable time or of the important witness of the prosecution, which make it difficult or impossible for the Magistrate to proceed with the case in normal way. Therefore, in such situation, when the Magistrate finds it difficult to decide the case on merit, without hindrance, in the normal manner, as per procedure under the Code provisions of Section 258 of the Code can be resorted to. Likewise, also been observed by Hon'ble Supreme Court of India in the case of P.R. Rao vs. State of Karnataka - 2002 (2) GLR

1549 that the Criminal Courts should exercise their available powers such as those under Section 309, 311, 258 of the Code of Criminal Procedure, 1973 to effectuate the right to speedy trial. Thus, taking into consideration the observations made by the Hon'ble Supreme Court in the case of P. R. Rao vs. State of Karnataka (supra) and Hon'ble High Court of Bombay in the case of Mulchand Motilal Raka (supra), this Court finds that there are no reasonable reasons to keep the case pending as whereabouts of the accused are not known and he/she is not traceable since long period of time.

(3) Considering the aforesaid facts and circumstances of the case and the fact that the accused is not traceable since long time and his/her exact whereabouts are not known at present as well as the nature of offences alleged, trial procedure and punishment provided for the offence alleged, left with no hope of getting progress in the present case in the near future, further proceedings are required to be stopped under Section 258 of the Code of Criminal Procedure, 1973. Hence, in the larger interest of justice, the following order is passed:

ORDER

- a) The proceedings against the accused are hereby stopped under Section 258 of the Criminal Procedure Code, 1973. However, liberty is reserved in favour of the prosecution to re-open the case in case the accused is found.
- b) The bail-bond of the accused is hereby stands cancelled and the surety is hereby discharged.
- c) Cash bail bond, if any, is hereby forfeited and money of cash bond be deposited in Government Fund.
- d) Non Valuable muddamal, if any, be disposed of after lapse of appeal period.

Signed and pronounced in the open Court on this _____
Day of _____

Date: 12/03/2021

Place: Surat.

(M. H. Vaghela)

6th Addl. Civil Judge & J.M.F.C.,
Surat.
Code GJ01339