

Page No.: 1 Cr.M.A. No.567/ 2022
Received on : 07/10/2022
Registered on : 07/10/2022
Decided on : 17/10/2022
Duration: 10 Days.

**IN THE COURT OF DISTRICT & SESSIONS JUDGE,
AT JUNAGADH**

CRIMINAL MISC.APPLICATION NO.567 OF 2022

Exh.: _____

APPLICANT/ACCUSED:

Ashvin Manilal Lodhiya,
Aged about: 53 years,
Occupation: Structural Engineer,
R/o.Sparkle Apartment,
Second Floor,
Kotechanagar,
Rajkot.

Versus

OPPONENT:

The State of Gujarat,
Summons Through: The Public Prosecutor,
Junagadh.

APPEARANCES:

Mr.K.H.Dhamani, L.A. for the applicant.
Mr.D.C.Thaker, Ld.Ad.P.P. for the State

**APPLICATION FILED UNDER SECTION 439(b) OF CODE OF
CRIMINAL PROCEDURE FOR MODIFICATION IN THE
CONDITION OF BAIL GRANTED**

-: J U D G M E N T :-

1. The applicant has filed this application under Section 439(b) of Code of Criminal

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Junagadh

Procedure-1973, seeking modification in the condition No.7 of the anticipatory bail granted vide order passed in Cr.M.A. No.684/2013 in connection with Cr.No.I-38/2013.

2. The notice was issued to the otherside. Ld.Ad.P.P. representing the State, has appeared before this Court, and filed the opinion of Investigating Officer vide Exh.-6 to resist the application.
3. Heard Ld.Advocate Shri K.H.Dhamani for the applicant/accused and Ld.Ad.P.P. Shri D.C.Thaker for the opponent-State. Read the application. Perused the papers produced by the applicant/accused. Also perused the Police papers made available to this Court and affidavit of the P.S.I.
4. Ld.Advocate Shri K.H.Dhamani, for the applicant/accused has courteously submitted that the applicant/accused wants to visit Bali during the Diwali vacation. He has also submitted that that vide the order passed in Cr.M.A. No.646/2016, the condition No.7 imposed was deleted. He has thus urged that the present application be granted and he be permitted to leave the country India from

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22/10/2022 to 30/10/2022.

5. Per contra, Ld.Ad.P.P. Shri D.C.Thaker, for the State, has vehemently opposed this application, however, he has fairly submitted that the applicant/accused has not made breach of the conditions imposed and has urged to pass the appropriate orders.
6. It transpires from the Police papers made available to this Court and from the report of the P.S.I., B-Division Police Station, Junagadh produced at Exh.-6 that the applicant/accused is booked in the offences punishable u/ss.304, 308, 337, 34, 120(B), 465, 471, 201 of I.P.C. It further transpires that earlier the applicant/accused was granted anticipatory bail by the then Court vide order passed in Cr.M.A. No.684/2013 wherein condition No.5 was imposed restricting the applicant/accused to leave the State of Gujarat without prior permission of the Court and condition No.7 was also imposed directing the applicant/accused to deposit the passport. Pursuant to the said order, the applicant/accused had moved the Hon'ble High Court of Gujarat by way of Cr.M.A. No.12269/2014 whereby the Hon'ble

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High Court was pleased to modify the condition No.5 restricting the applicant/accused not to leave the Country India without prior permission of the Court. The P.S.I. in his affidavit, has expressed his apprehensions to the extent that if the applicant/accused is permitted to leave the Country, he will not return back, would obstruct the trial by not remaining present and would breach the condition imposed by the Court. Sessions Case No.37/2016 is pending before this Court.

6.1 It further transpires from the record that earlier the applicant/accused was permitted to leave the country India by the order passed by the then Court in Cr.M.A. No.80/2022 dated 18/02/2022. *In the said application, the reason advanced by the applicant/accused was for visiting Dubai to attend the International Interior Design Expo at Dubai. Here in the present application, the applicant/accused has stated the reason that he wants to visit Bali during Diwali vacation.

6.2 It further transpires that the applicant/accused had moved the Hon'ble High

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Court of Gujarat by way of Cr.M.A. No.3620/2014 for quashing and as per the details of the said application as produced by the applicant/accused himself, reveals that the said matter is fixed on 20/10/2022. The applicant/accused intends to leave the Country for the period from 22/10/2022 to 30/10/2022. Earlier also the applicant/accused was permitted to move out of India by the then Court subject to certain conditions. Admittedly, the State has not said that the applicant/accused had made breach of the conditions imposed upon him at that relevant period of time. The Quashing Petition is of the year 2014 and as argued by Shri Dhamani, the applicant/accused is granted interim relief. The Ld.Ad.P.P. shri Thakar has conceded this fact. Seen thus, when there is no complain of breach of condition by the applicant/accused and on finding the reasons for visiting Bali to be bonafide for Diwali Holidays, I do not find any reason to decline the request of the applicant/accused, more particularly when on earlier occasion he was permitted to move out of India, obviously subject to certain stringent conditions. Hence the following order is passed:

Sessions Judge
Junagadh

-: ORDER :-

1. The present application filed by applicant-accused:**Ashvin Manilal Lodhiya**, under Section-439(b) of the Code of Criminal Procedure for modification in the condition No.5 of the anticipatory bail granted vide Cr.M.A. No.684/2013 as further modified by the Hon'ble High Court vide Cr.M.A. No.12269/2014, in connection with Cr.No.I-38/2013, registered with Junagadh B-Division Police Station, is hereby **ALLOWED**.
2. The condition No.5 imposed in Cr.M.A. No.684/2013 as further modified by the Hon'ble High Court vide Cr.M.A. No.12269/2014 is hereby temporarily modified for the period for 9-days i.e. from 22/10/2022 to 30/10/2022.
3. The applicant/accused is hereby directed to execute an affidavit furnishing the complete name and address of the place of Bali where he is going to reside for said period alongwith contact details thereof, before this Court.
4. The applicant/accused is hereby permitted to leave the country India to visit Bali for the aforesaid period, with a condition that applicant/accused shall deposit an amount of Rs.1,00,000/- (Rupees One Lac Only) before this Court, as security amount and same shall be

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returned to the applicant/accused on his returning back.

5. Other conditions of the order passed in Cr.M.A. No.684/2013, except modified, remains as it is.
6. Yadi be made accordingly.

Signed and pronounced in the open Court on this 17th day of October, 2022.

Date:17/10/2022

Place:Junagadh

(ROHEN K. CHUDAWALA)

District & Sessions Judge

Junagadh

UIC No.GJ01317



Sessions Judge
Junagadh