

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION NO. 998 of 2023

=====

RAMESHBHAI CHANDRASINH RATHVA
Versus
STATE OF GUJARAT

=====

Appearance:

MR MAULIK M SONI(7249) for the Applicant(s) No. 1
MS JIRGA JHAVERI, ADDITIONAL PUBLIC PROSECUTOR for the
Respondent(s) No. 1

=====

CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 09/08/2023

ORAL ORDER

- 1. RULE.** Learned Additional Public Prosecutor waives service of notice of Rule on behalf of respondent – State.

- 2.** By way of this Application, the challenge is given to the findings of conviction and sentence passed under the Gujarat Prohibition Act (hereinafter referred to in short as ‘the Prohibition Act’). Vide order dated 16.06.2022 passed by the learned Principal Judicial Magistrate First Class, Dhanpur in Criminal Case No.220 of 2017, the applicant was convicted under Section 85 of Prohibition Act and sentenced to

undergo simple imprisonment of one year and under Section 66(1)(b) of the Prohibition Act was sentenced to undergo simple imprisonment of three months. The above judgment was challenged before the learned Appellate Court and the learned 3rd Additional Sessions Judge, Limkheda, Dahod vide order dated 04.08.2023 passed in Criminal Appeal No.6 of 2000 dismissed the conviction under Section 85 of the Prohibition Act and upheld the conviction under Section 66(1)(b) of the Prohibition Act.

3. Learned Advocate for the applicant submitted that while challenging the conviction and sentence qua the Criminal Appeal, the learned Appellate Court Judge did not find any reason for the conviction under Section 85 of the Prohibition Act and therefore, the conviction under this Section was set aside. The three months simple imprisonment awarded under Section 66(1)(b) of the Prohibition Act was confirmed by the learned Appellate Court, and therefore, against such conviction and sentence, the applicant-revisionist is before this Court. It is also submitted that for the mandatory requirement as per Rule 4, 0.5 ml of

blood for analysis has to be drawn while in the present case, 0.4 ml blood was drawn and on that basis, the conviction followed. It is further submitted that there are no such antecedents qua the applicant under the Prohibition Act and the alcoholic content in the blood may be for some other reason like consumption of cough syrup or any other substance and this probability has not been considered. In addition, it is also submitted that while drawing blood often 'spirit' is used for cleaning the surface of the skin and on that ground also, benefit of doubt ought to have been granted to the applicant. It was, therefore, prayed that the present application may be allowed and the applicant herein may be released on regular bail.

4. Learned Additional Public Prosecutor submitted that considering the nature/gravity of the offence and there are concurrent findings and that Rule 4 is directive in nature and not mandatory and thus, there would not be any illegality in the order of conviction and sentence.

5. Heard learned Advocates on both the sides and perused the material on record. Taking into consideration the facts and circumstances of the case, on the basis of the submissions advanced and when the revision application will take its own time to come for final hearing, the order of sentence requires consideration.

6. Hence, the sentence imposed upon the applicant-revisionist vide judgment and order dated 16.06.2022 passed by the learned Principal Judicial Magistrate First Class, Dhanpur in Criminal Case No.220 of 2017 as also the order dated 04.08.2023 passed by the learned 3rd Additional Sessions Judge, Limkheda, Dahod in Criminal Appeal No.6 of 2000, shall remain suspended pending hearing and final disposal of the present Revision Application and the applicant-revisionist herein is ordered to be released on bail on executing a personal bond of **Rs.10,000/- (Rupees Ten Thousand Only)** with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall;

- [a] pursue this Revision Application;
- [b] not take undue advantage of liberty or misuse liberty;
- [c] surrender passport, if any, to the lower court within a week;
- [d] not leave India without prior permission of this Court;

7. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.

CAROLINE

Sd/-
(GITA GOPI, J)