

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 1215 of 2024**

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BHAVIK DHIRUBHAI KORAT

Versus

STATE OF GUJARAT

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Appearance:

MR HITESH B PRAJAPATI(13805) for the Applicant(s) No. 1

MR VIRAT G POPAT(3710) for the Applicant(s) No. 1

MR HARDIK MEHTA, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI**Date : 14/08/2024****ORAL ORDER**

1. Mr. Virat G. Popat, learned advocate for the petitioner submitted that the petitioner is residing since very long time in the foreign country. His brother is the Director of the company which is involved in the present matter and the petitioner was before the quashing court making a prayer for quashing of the FIR. The matter came to be dismissed as withdrawn on 06/02/2024 in Criminal Misc. Application No.18835 of 2021.

2. Mr. Virat Popat, learned advocate submitted that the petitioner is challenging the order passed under Section 70 of the Criminal Procedure Code dated 03/08/2021 by the learned Sessions Judge, Surat, which is on the requisition made by the police on 03/08/2021 in connection with the FIR No.10 of 2019 registered with CID Crime Police Station, Surat.

3. Mr. Virat Popat, learned advocate, referring to the judgment of **State through CBI vs. Dawood Ibrahim Kaskar** reported in **AIR 1997 SC 2494**, submitted that the court cannot pass an order under Section 70 to aid the investigation and referring to para-20 of the case between **Tarsem Lal vs. Directorate of Enforcement Jalandhar Zonal Office** reported in **2024 SC Online SC 971**, submitted that in connection with PMLA cases, it has observed that once cognizance is taken of the offence and when Special Court is seized of the matter then ED or other authority cannot exercise the power of arrest of the accused and that it is only the Special Court then could have to deal with the proceedings and other authorities become powerless to arrest the accused.

4. Mr. Hardik Mehta, learned APP submitted that the petitioner was having knowledge of the complaint against him. He failed to surrender himself. The issuance of warrant under Section 70 would have been followed with the proceedings under Sections 82 and 83 of the Criminal Procedure Code and further stated that the red corner notice was issued which fact has not been explicitly disclosed and further stated that the dismissal of the quashing petition was by way of withdrawal. These facts would be required to be taken into consideration to see the conduct of the petitioner.

5. The prayer was by the Detective Police Inspector, CID Crime, Surat to the Designated Court for issuance of warrant

under Section 70 of the Criminal Procedure Code against the petitioner as shown as absconder under matter under Sections 406, 409, 420, 120B of the Indian Penal Code and Section 3 of the GPID Act.

6. Learned Judge on requisition of the Detective Police Inspector had passed an order on 03/08/2021 ordering an issuance of warrant against the petitioner. The charge sheet has been filed on 11/11/2019. Thus, in view of this fact and the proceedings, when the petitioner has been shown in column no.2 in the charge sheet as absconder, now, the Court would require his presence and the order, thus, should have been passed for the production of the accused before the court, but not on the requisition of police.

7. The order impugned notices that though summons has been issued, the petitioner had not remained present and had gone from Mumbai to Ethiopia. The red corner notice was issued and for initiating proceedings under Section 82 and 83 of the Criminal Procedure Code, the order under Section 70 of the Criminal Procedure Code has been sought for.

8. It is stated by learned advocate Mr. Popat that the petitioner proposes to come back and present himself before the Court.

9. Considering the fact that the petitioner was proceeding for quashing of the FIR before co-ordinate bench and now when the matter has been dismissed as withdrawn, prayer to

appear before the concerned court is required to be appreciated in the fact that the petitioner would now face the trial.

10. In view of the same, order impugned dated 03/08/2021 of the learned Sessions Judge, Surat is stayed and it is directed that the petitioner appear before the concerned court within a period of one month from today.

11. Let the matter be listed on 18/09/2024. In the meantime, no coercive steps to be taken by the police.

(GITA GOPLJ)

ILA