2011 (2) GCD 1788

GUJARAT HIGH COURT

Hon'ble Judges:S.R.Brahmbhatt, J.

Yogeshbhai Durgaprasad Sharma Versus State Of Gujarat

Criminal Miscellaneous Application No. 8352 of 2006 ;
Criminal Miscellaneous Application No. 6251 of 2005 ; *J.Date :- MAY 11, 2011

- INDIAN PENAL CODE, 1860 Section - 120B , 406 , 409 , 420 , 467 , 471

Indian Penal Code, 1860 - S. 120B, 406, 409, 420, 467, 471 - conditional release on bail - application seeking modification of condition as agreed to pay Rs. 1 crore to bank filed - held, on fact that applicant has paid Rs. 56 lacs and could not pay rest amount on account of financial exigency and has made apology, payment rescheduled - application disposed of.

Imp.Para: [5]

Equivalent Citation(s):
2011 (2) GCD 1788 : 2012 (111) AIC 378

JUDGMENT :-

1 The applicant, who was ordered to be released on bail as he was in custody in connection with the offences registered as I.CR. No. 375 of 2004 at Madhavpura Police Station for the offences punishable under Sections 406, 409, 420, 467, 471, 120-B of the Indian Penal Code, has taken out this application for seeking modification in the order and exemption from making further payment on account of his inability to pay for the reasons pleaded in the application. The applicant had agreed to pay Rs.1 crore to Bank as condition for releasing him on bail. The schedule of payment was also mentioned in the order. Unfortunately, on the part of applicant, he could not adhere to the schedule and hence present application was filed contending that in fact the brother of the applicant and co-accused is to be blamed for defaults.

2 Today, learned advocate for the applicant has placed on record the affidavit-in-rejoinder to meet with the reply filed by respondent Bank. The same is taken on record. Learned advocate appearing for the applicant, under the instructions of the applicant, who is present in the court and who has been identified by Shri Popat, learned advocate for the applicant, that applicant be

given some extension of time in complying with the order of payment of Rs.1 crore, which he had agreed to pay as one of the conditions of his release. He further submits that the applicant be given extension of time for making payment of Rs. 1 crore. He also submitted that in the meantime, the schedule, who was given, was not adhered to, however, total amount of Rs.56 lacs is already paid, which includes the deposits lying with the Bank, which have been encashed and appropriated towards said amount and hence only Rs.44 lacs are remaining to be paid. Learned advocate for the applicant submitted that out of remaining amount, Rs. 8 lacs will be paid in the first week of June, 2011 and thereafter, in every subsequent months on or before 28th day of that month from July, 2011, on wards Rs.6 lacs would be paid, which would complete Rs. 44 lacs by 28th December, 2011. Learned advocate for the applicant has also submitted that the applicant is ready and willing to file an undertaking to this effect.

3 Shri Vikram Singh Gohil, learned advocate for respondent no. 2 submitted that they have no objection in case if the applicant is permitted to make up deficiency in payment by extending the time.

4 Learned APP Shri Raval for respondent no. 1 submitted that Court may pass appropriate order.

5 This Court is of the view that applicant has remained on bail since his release pursuant to the order of this court made on 28.10.2005. When the applicant has come forward with his willingness to abide by the original condition and has pleaded his inability to comply with the condition on account of serious financial exigency for which he apologies, the Court is to condone this defaults as now the applicant, has agreed for making the payment of remaining amount of Rs. 44 lacs as stated hereinabove. The application though was filed for modification and relaxation of the condition, has now been confined to extension of time for compliance, as submitted by learned advocate for the applicant. The defaults occurred in making the payment are condoned as the Bank has no objection. The time for complying with the order passed earlier is extended in light of the rescheduled of payment and the remaining amount of Rs.44 lacs be paid on or before 28th December, 2011 as indicated hereinabove. The applicant shall file the undertaking indicating aforesaid facts and his apology for default within one week from today, with a copy to all the parties. It goes without saying that if there is any default on the part of applicant, the respondent State as well as Bank would be at liberty to move the Court for seeking cancellation and other proceedings including contempt of Court as the applicant has chosen to be bound by the undertaking. Criminal Misc. Application is disposed of. Rule is made absolute to the aforesaid extent. Direct service permitted.