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Reserved On : 09/04/2025
Pronounced On : 17/04/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC. APPLICATION NO. 4659 of 2025
(FOR SUCCESSIVE REGULAR BAIL - AFTER CHARGESHEET)

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI : Sd/-

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Approved for Reporting	Yes	No
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MOHAMMED SAJJAD MOHAMMED IMTIYAZ
Versus
STATE OF GUJARAT

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Appearance:
MR ASHISH M DAGLI(2203) for the Applicant(s) No. 1
MS SHRUTI PATHAK APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**

CAV JUDGMENT

1. The present application, which is a successive bail application preferred by the applicant after the rejection of earlier bail application being Criminal Misc. Application No.10666/2023 by an order dated 19.12.2023, is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the FIR being C.R. No.7/2023 registered with the Anti Terrorist Squad, Ahmedabad for the offence punishable under Sections 121(a), 123, 465, 468, 471 and 120(B) of the Indian Penal Code.

2. Heard learned advocate, Mr. Ashish Dagli for the applicant and learned APP Ms. Shruti Pathak for the respondent – State of Gujarat.

3. Learned advocate, Mr. Dagli submitted that this is a successive bail application preferred by the applicant after the rejection of earlier bail application being Criminal Misc. Application No.10666/2023 by an order dated 19.12.2023. He has drawn attention of this Court towards the order dated 02.09.2024 passed by the Hon'ble Supreme Court in Special Leave Petition (Crl.) No.7816/2024 and submitted that against the rejection of earlier bail application, the applicant preferred said SLP, however at the time of hearing of said petition, a statement was made on behalf of the State that they intent to examine not more than five more witnesses and endeavour would be made to conclude the trial within a period of six months and on the strength of the said statement, the said SLP was not entertained, however, liberty was reserved to file fresh bail application before this Hon'ble Court if the trial is not concluded within six months. He submitted that in fact, more than six months have been passed but trial has not concluded. He further submitted that the applicant is in jail since his arrest i.e. since 25.10.2021, therefore considering the period of incarceration spent by the applicant in jail, the case of the applicant for the grant of bail may be considered.

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4. Learned advocate submitted that at the time of submission of the chargesheet, the prosecution has put reliance upon 33 witnesses, out of which, maximum witnesses have been examined and at the time of hearing of the SLP, only 5 witnesses were required to be examined, therefore as stated above, a statement was made on behalf of the State that State intend to examine only five witnesses and the trial would be concluded within six months, however thereafter, the State preferred an application under Section 311 of the CrPC to call two persons as witnesses, which was allowed by the court concerned but still, the State is of the opinion that more than 10 witnesses are to be examined, therefore, trial will take considerable time to conclude. He further submitted that if the details of remaining witnesses are seen, in that event, it is found out that, those witnesses are residing outside the State of Gujarat i.e. Tripura, Bihar, Jammu & Kashmir etc. and the concerned court has issued summons upon them, which were duly served, however for the reasons best known, they have chosen not to appear before the court concerned, therefore, the trial is on that stage, where the SLP was not entertained and thus, there is no progress in the trial. In support of the said submission, he has referred to Rojkam of the trial court. He further submitted that even otherwise also, on merit, the applicant is having good case but as this is a successive

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bail application, he is not touching the merits of the case.

5. Learned advocate, at this stage, has relied upon the judgments of the Hon'ble Supreme Court as well as other High Courts, copies of which are produced on record from Page Nos.72 to 112 of the compilation and submitted that in number of cases, the Hon'ble Supreme Court has considered the period of incarceration spent by the accused concerned and released them on bail imposing suitable conditions. Referring to the aforesaid decisions, learned advocate submitted that the case of the applicant is squarely covered by the aforesaid decisions. It is submitted that if the Hon'ble Court would make a cursory glance upon the said decisions, in that event, it is found out that it is well-established principle that "bail is the rule and refusal is an exception". It is, therefore, urged that considering the facts of the case as also considering the period of incarceration, the applicant may be granted bail by imposing suitable conditions.

6. On the other hand, learned APP has objected the grant of present application looking to the nature and gravity of the offence. It is submitted that the role of the present applicant is clearly spelt out from the body of the complaint as well as papers of the chargesheet. Learned APP submitted that the present application is a successive bail application after the rejection of earlier bail

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application and the said order has been upheld by the Hon'ble Supreme Court in the SLP filed by the applicant and thus, it has attained its finality. Learned advocate submitted that in fact, the present application is preferred without disclosing any change in the circumstances except delay in trial and the applicant has failed to show any change in the circumstances and the reasons, which are mentioned in the memo of application, were at all available at the earlier point of time when earlier bail application was rejected. Learned APP further submitted that as stated above, this is a successive bail application and, hence, change in the circumstance is required to be pointed out by learned advocate but he has failed to show and in absence of any changed circumstances, this application cannot be entertained and it may be rejected.

7. Learned APP submitted that the present application is preferred solely on the ground that the trial has not concluded within time framed schedule and the period of incarceration spent by the applicant. She, however, referred to the chargesheet papers and submitted that the role of the applicant is described in a graphical manner and the said role has already been considered by this Court while rejecting earlier bail application preferred by the applicant. She, however, submitted that in fact, from the chargesheet papers, the role attributed to the

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applicant herein is clearly spelt out. She referred to the chargesheet papers submitted that the applicant used to forward/ supply certain secret information of the national to the handler of ISI situated at Pakistan and in turn, he used to received monetary benefits from neighbouring country and thus, the applicant is acting against the welfare of nation and the said fact is clearly substantiated from the documents collected by the IO during the course of investigation. She further submitted that the present applicant is resident of Jammu & Kashmir and if the applicant is released on bail, in that event, it would be very difficult for the prosecution to secure his presence and it would affect the trial also as the same is in progress and few witnesses are to be examined. She further submitted that as stated above, summons have been issued calling those witnesses, therefore, they would be examined in near future to prove the guilt against the applicant, therefore, the bail may not be considered only on the ground of delay in trial as also period of incarceration. It is, therefore, urged that the present application may not be entertained.

8. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers of the investigation and considered the allegations levelled against the applicant and the role played by the applicant. I have also

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considered the reasoning given by the concerned court while rejecting the bail application and the affidavit filed by the IO opposing the said application.

9. It is the settled position of the law that, at this juncture detailed discussion of evidence and canvassing of the allegations contained in FIR as well as affidavit of the concerned Investigating Officer or the merits of the case as well, is not necessary and should be avoided.

10. So far as the maintainability of a successive bail application is concerned, it is no longer res-integra that the same is maintainable. However, the question, which arises for consideration of this Court, is as to whether without any fresh new and changed circumstances, a Court should consider a subsequent bail application ignoring its previous order rejecting the previous bail application or not. In my considered opinion, the same would not be possible. A subsequent bail application is maintainable but consideration of the prayer of bail would depend on the facts as to whether fresh and new grounds have been pleaded and are available or not.

11. It is a well settled principle of law that when the successive application comes before the Court, the Court would be very conscious while considering the same. It is also a settled position of law that successive bail applications are permissible under the changed circumstances

and the changed circumstances must be substantial one which has direct impact on the earlier decision and not merely a cosmetic changes which are of little or no consequences. As held by the Apex Court in **State of Maharashtra Vs. Captain Buddhikota Subha Rao**, reported in **AIR 1989 SC 2292**, that successive bail application can be entertained by the Court when substantial change is established by the accused, which would entitle him for getting bail in successive bail application. The Court should not pass the order of releasing him on bail in successive bail application merely establishing some cosmetic change between time gap of two applications. There should be drastic change during the period between two applications, which would entitle the accused for bail. The Apex Court in the case of **Kalyanchandra Sarkar Vs. Rajesh Ranjan**, reported in **(2005) 2 SCC 42** while dealing with the issue of successive bail application has observed that without change in the circumstances, the subsequent bail application would be deemed to be seeking a review of the earlier rejection order which is not permissible under the criminal law. The Hon'ble Supreme Court has further observed that while entertaining such undefined consequent bail application, the Court has a duty to consider the reasons and grounds on which the earlier bail application was rejected and what are the fresh grounds which persuade it warranting the

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evaluation and consideration of the bail application afresh and to take a view different from one taken in the earlier application.

12. At this stage, I would like to put reliance upon the decision of the Hon'ble Supreme Court in case of **Central Bureau Of Investigation Vs. V.Vijay Sai Reddy**, reported in **(2013) 7 SCC 452**, wherein the Hon'ble Supreme Court has observed as under,

> "While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the

evidence establishing the guilt of the accused beyond reasonable doubt."

13. Considering the above decision, it is required to be noted that the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

14. It is found out from the arguments canvassed by learned advocate for the applicant that main argument of learned advocate for the applicant is with regard to delay in trial and period of incarceration spent by the applicant in jail and liberty guaranteed under Article 21 of the Constitution of India relying upon the recent decisions of the Hon'ble Supreme Court. It is, however, required to be noted that except above facts, learned advocate for the applicant has failed to point out any chance in circumstances. Therefore in absence of any change in the circumstances, once again present application is preferred agitating same grounds, which in the opinion of this Court, is not available to the applicant in a successive bail application.

15. At this stage, I would like to refer to the decision of the Hon'ble Supreme Court in case of

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State of Maharashtra Vs. Buddhikota Subha Rao, reported in **1989 Supp (2) SCC 605,** wherein it has been held by the Apex Court that once a bail application was rejected there was no question of granting a similar prayer. Granting it would be virtually overruling the earlier decision without there being a change in the fact-situation. A substantial change is one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. It has been held as under :-

> "7. Liberty occupies a place of pride in our socio-political order. And who knew the value of liberty more than the founding fathers of our Constitution whose liberty was curtailed time and again under Draconian laws by the colonial rulers. That is why they provided in Article 21 of the Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. It follows therefore that the personal liberty of an individual can be curbed by procedure established by law. The Code of Criminal Procedure, 1973, is one such procedural law. That law permits curtailment of liberty of anti-social and anti-national elements. Article 22 casts certain obligations on the authorities in the event of arrest of an individual

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accused of the commission of a crime against society or the Nation. In cases of undertrials charged with the commission of an offence or offences the court is generally called upon to decide whether to release him on bail or to commit him to jail. This decision has to be made, mainly in non-bailable cases, having regard to the nature of the crime, the circumstances in which it was committed, the background of the accused, the possibility of his jumping bail, the impact that his release may make on the prosecution witnesses, its impact on society and the possibility of retribution, etc. In the present case the successive bail applications preferred by the respondent were rejected on merits having regard to the gravity of the offence alleged to have been committed. One such Application No. 36 of 1989 was rejected by Suresh, J. himself. Undeterred the respondent went on preferring successive applications for bail. All such pending bail applications were rejected by Puranik, J. by a common order on 6-6-1989. Unfortunately, Puranik, J. was not aware of the pendency of yet another bail application No. 995 of 1989 otherwise he would have disposed it of by the very same common order. Before the ink was dry on

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Puranik, J.'s order, it was upturned by the impugned order. It is not as if the court passing the impugned order was not aware of the decision of Puranik, J.; in fact there is a reference to the same in the impugned order. Could this be done in the absence of new facts and changed circumstances? What is important to realise is that in Criminal Application No. 375 of 1989, the respondent had made an identical request as is obvious from one of the prayers (extracted earlier) made therein. Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-situation. And, when we speak of change, we mean a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Between the two orders there was a gap of only two days and it is nobody's case that during these two days drastic changes had taken place necessitating the release of the respondent on bail. Judicial discipline, propriety and comity demanded that the impugned order should not have been passed reversing all earlier orders including the one rendered by Puranik, J., only a couple of days

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before, in the absence of any substantial change in the fact-situation. In such cases it is necessary to act with restraint and circumspection so that the process of the court is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one judge or selected another to secure an order which had hitherto eluded him. In such a situation the proper course, we think, is to direct that the matter be placed before the same learned Judge who disposed of the earlier applications. Such a practice or convention would prevent abuse of the process of court inasmuch as it will prevent an impression being created that a litigant is avoiding or selecting a court to secure an order to his liking. Such a practice would also discourage the filing of successive bail applications without change of circumstances. Such a practice if adopted would be conducive to judicial discipline and would also save the court's time as a judge familiar with the facts would be able to dispose of the subsequent application with despatch. It will also result in consistency. In their view that we take we are fortified by the observations of this Court in para 5 of the judgment in Shahzad Hasan Khan v. Ishtiaq

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> Hasan Khan [(1987) 2 SCC 684] . For the above reasons we are of the view that there was no justification for passing the impugned order in the absence of a substantial change in the fact-situation. That is what prompted Shetty, J. to describe the impugned order as 'a bit out of the ordinary'. Judicial restraint demands that we say no more.
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> (emphasis supplied)

16. At this stage, I would also like to refer to the decision of the Hon'ble Supreme Court in case of **X Vs. State of Rajasthan & Anr.**, delivered in Special Leave Petition (Criminal) No.13378 of 2024, wherein the Hon'ble Supreme Court, while considering the application for bail, has opined that once the trial commences, the High Court should not exercise the discretion as it would be fatal to the prosecution case. Paragraph No.16 of the said decision reads as under,

> "16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the

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deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed."

17. At this stage, I would like to put reliance upon the decision of the Hon'ble Apex Court in the case of **Rajesh Ranjan Yadav @ Pappu Yadav Vs. CBI Through its Director**, reported in **(2007) 1 SCC 70**, wherein, the Apex Court has laid down that, while considering an application for regular bail, the Courts shall have to take into consideration, the following aspects,

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant;

(c) Prima facie satisfaction of the court in support of the charge;

18. The Hon'ble Apex Court, further, observed at Paragraphs-10 and 16 thus;

"10. In our opinion none of the aforesaid decisions can be said to have laid down any

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absolute and unconditional rule about when bail should be granted by the Court and when it should not. It all depends on the facts and circumstances of each case and it cannot be said there is any absolute rule that because a long period of imprisonment has expired bail must necessarily be granted.

16. We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the Court has also to take into consideration other facts and circumstances, such as the interest of the society."

19. Apart from the above, I have also considered merits of the case, which has already been discussed while rejecting earlier bail application preferred by the applicant and found the active involvement of the applicant in the commission of crime in connivance with other co-accused.

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Therefore on merit also, the applicant has no case.

20. I have also considered the decisions relied upon by the learned advocate for the applicant, copies of which are produced on record. However having considered those decision, there cannot be any dispute with regard to the ratio laid down in the same. However, in the facts and circumstances of the case on hand and this being discretionary relief, which requires to be granted judiciously, the said decisions would be of no help to the present applicant at this juncture considering the nature of offence, role attributed to the applicant and played by him as also the fact that the applicant has committed offence against the nation.

21. Over and above that, strong apprehension has been shown by prosecution that if the applicant is released on bail then, there is possibility of tampering with the evidence and fleeing away from the trial. Over and above that, the trial has proceeded further and few witnesses are yet to be examined and within no time, the witnesses would be examined and the trial would be concluded.

22. From the aforesaid discussion, it appears that as per the prosecution case, the applicant is involved in serious offence against the welfare of nation though he was working in BSF, wherein his active involvement is found out and taking into consideration the complicity of the applicant,

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there being apprehension of the witnesses being influenced as the trial has already begun, severity of punishment as drawn from the nature and gravity of the accusations, after taking due consideration of the submissions of the parties, and the settled case law in various judgments passed by the Hon'ble Supreme Court and various Hon'ble High Courts, without expressing any opinion on the merits of the case, I am of the opinion that it is not a fit case for bail, that too, in a successive application.

23. Considering the submissions canvassed by learned advocates for the parties, perusing the records and the law on the issue, there is no fresh and new ground available in the present successive bail application. Therefore, I do not find any substantial change in the circumstance so far as merit of the case is concerned and do not find it a fit case for bail.

24. Accordingly, the present application is rejected. Notice is discharged. However, it is expected that the trial court concerned shall proceed with the trial and conclude the same as early as possible.

25. Needless to say that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the trial Court will not be influenced by any observations made therein.

Sd/-
(DIVYESH A. JOSHI, J.)

Gautam