

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC.APPLICATION (TEMPORARY BAIL) NO. 1 of 2020****In R/CRIMINAL APPEAL NO. 499 of 2016****With****CRIMINAL MISC.APPLICATION (TEMPORARY BAIL) NO. 1 of 2020****In R/CRIMINAL APPEAL NO. 564 of 2019**

=====

REKHABEN NARESHBHAI GOHIL**Versus****JAIL SUPERINTENDENT**

=====

Appearance:**THROUGH JAIL for the PETITIONER(s) No.****for the RESPONDENT(s) No.****MR MITESH AMINT, PUBLIC PROSECUTOR WITH MR MANAN MEHTA,
APP for the RESPONDENT(s) No.**

=====

CORAM: HONOURABLE MR.JUSTICE N.V.ANJARIA**and****HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI****Date : 17/04/2020**

ALL ABOUT LAW

COMMON IA ORDER**(PER : HONOURABLE MR.JUSTICE N.V.ANJARIA)**

Both these applications forwarded through jail in which the respective applicant seek temporary bail, were taken together for hearing looking to the similarity of the subject.

2. The first captioned Criminal Miscellaneous Application (Temporary Bail) No.1 of 2020 in Criminal Appeal No.499 of 2016 is by one Rekhaben Nareshbhai Gohil-the convict, undergoing sentence at the Rajkot Central Jail having been convicted for the offences under Sections 302, 307 and 394 of the Indian Penal Code. This applicant has sought temporary bail on the

ground that her three children named Sachin Nareshbhai Gohil aged 14 years, Sumit Nareshbhai Gohil aged 10 years and Raviraj Nareshbhai Gohil aged 08 years are presently kept in the Home For Boys at Rajkot and that the applicant wants to take the children away from the Home in view of the present situation which has arisen due to spread of Corona Virus (COVID-19), as according to the applicant, there is nobody who could take care of her children.

2.1 The second application being Criminal Miscellaneous Application (Temporary Bail) No.1 of 2020 in Criminal Appeal No.564 of 2019 is filed by one Gangaben Ranchhodbhai Sonagara who is also convict undergoing imprisonment upon conviction under Sections 302, 201 and 34 of the Indian Penal Code. She has stated in the letter addressed through jail that her two children named Anil Ranchhodbhai Sonagara aged 14 years and Jignesh Ranchhodbhai Sonagara aged 11 years, studying at Vajendra Vidyavihar Secondary School, Dhangadhra are kept in Swami Gurukul Ashram, Dhangadhra. It is the case that since there is nobody who may take care of the children and that except the applicant-mother, no relative would be able to take care of the children, the applicant may be allowed enlargement on temporary bail for reasonable period so as to enable the applicant to attend to and make arrangements for her children.

3. Thus, in both the applications, the ground advanced by the respective applicants-convict is to

release them on temporary bail as they want to attend to their children who are in the shelter homes as greater care is needed in the present times when the communicable respiratory disease called the Novel Corona Virus (COVID-19) has spread itself.

3.1 As in such times, the question of attending to the children of the parents who are in prison undergoing sentence assumes importance, while considering the present applications yesterday, we wanted from learned Public Prosecutor Mr.Mitesh Amin and learned Additional Public Prosecutor Mr.Manan Mehta the information regarding the steps and measurements which the government may have taken to take care of such destitute children, who are in the Welfare Homes. We requested the learned counsels to assist on facts on that score since such details would help the Court to decide on the prayers of the applicants-convicts for temporary release.

3.2 In response, it was stated today in course of hearing that in light of the observations and directives of the Supreme Court in order dated 16th March, 2020 and the subsequent orders in *suo motu* Writ Petition (Civil) No.1 of 2020, the Juvenile Justice Committee of the High Court of Gujarat, Ministry of Women and Child Development and the National Commission for Protection of Child Rights and the State Government have taken measures through the Department of Social Justice and Empowerment, Government of Gujarat. A recent Report dated 09th April, 2020 was made available to the Court in which

the competent authority have envisaged and enlisted several responsive and care taking measures specifically for the children leaving in the child care institutes in the context of COVID-19.

4. On the basis of the said report dated 09th April, 2020 which was produced and taken on record, learned Additional Public Prosecutor, highlighted that Child Welfare Committees are functional who, in coordination with the District Authorities concerned, have taken all necessary steps in the context of spread of corona virus so as to make available to the inmate children, the food, drinking water and other life necessities including the medical facilities. It was stated that Circulars are also issued. Learned Public Prosecutor as well as learned Additional Public Prosecutor assured the Court that the steps and measures as are contemplated are duly implemented.

4.1 Accordingly the Court was apprised of the measures which are made afoot by the authorities concerned to take care of the children staying in the Child Care Institutes.

4.2 Upon specific query, it was further stated that the Home for Boys at Rajkot where the children of the applicant of the first mentioned application have been staying, as well as the Swami Gurukul Ashram where the children of the applicant of the second application have been staying, are both presently open and functional.

4.3 It was stated that in addition to the children of the applicants, other children have also been staying at the said Child Care Institutes and they are being taken care of and attended to.

4.4 The above background of the report etc. was submitted by learned counsel for the State authorities which are only generally considered to decide the present two applications, which are however decided on their respective individual merits only.

5. Keeping in view of the above facts, aspects and submissions, we now proceed to consider the individual merits of two applications for temporary bail.

CRIMINAL MISC. APPLICATION NO.1 OF 2020
IN
CRIMINAL APPEAL NO.499 OF 2016

6. The three children of the present applicant are at Home For Boys at Rajkot. The applicant-Rekhaben as well as her husband-the father of the children, both are convicts. It was stated that the father-convict is absconding.

6.1 In the situation arising and when the authority concerned have taken adequate steps as above, we are of the view that as far as the present case is concerned, the children of the applicant would be taken care of in the Child Care Home concerned. We do not see any good reason, therefore

to allow to release the applicant on temporary bail for the purpose on the ground the release sought for.

6.2 At the same time, we observe and direct that the authorities shall take proper care of the children of the applicant who are staying at the Rajkot Home. They would be properly attended to in terms of standards of hygiene, availability of food and medicine and in all other respects which may be the steps needed to be taken in the present situation of corona virus (COVID-19) spread.

6.3 With the aforesaid observations, we do not entertain the present application.

CRIMINAL MISC. APPLICATION NO.1 OF 2020
IN
CRIMINAL APPEAL NO.564 OF 2019

7. As far as the merits of the present application are concerned, it was stated that one Shankarbhai-brother of the applicant Gangaben-the widow-has taken the custody of children from the authorities of the Gurukul Ashram. Learned Additional Public Prosecutor, upon instructions from the jail authorities, however stated before the Court that the said Shankarbhai has shown his unwillingness to keep the children in the custody beyond five days.

7.1 In this situation, when the children are at present out of the Gurukul Ashram and the care taker has shown his disinclination to take care of the children beyond a few days. We deem it fit to permit the applicant-Gangaben-the mother to be on temporary

bail for a period of 10 days from the date of her actual release so that the applicant-mother can attend to the children and make proper arrangements.

7.2 The release of the applicant on temporary bail shall be upon execution of bond of Rs.10,000/- (Rupees Ten Thousand Only) before the jail authorities.

7.3 Following further conditions shall operate;

- (i) The applicant shall abide the law of the land;
- (ii) The applicant shall not misuse his liberty during the period;
- (iii) The applicant shall report to the nearest police station once during the period of temporary bail;
- (iv) The applicant shall surrender upon the expiry of the temporary bail period;
- (v) By virtue of the present order, the applicant would be at large on temporary bail which would be during the period when the country and the State has been facing and fighting the situation arising out of dreadful spread of corona virus COVID-19, therefore it is directed further by way of condition imposed that during the period the applicant remains on temporary bail/leave, he will abide by

the rules, regulations and circulars which may have been issued by the Municipal Corporation or Municipal authority or any other government or semi-government body in relation to the corona disease. The applicant shall also observe the norms of social distancing and related discipline during the period of leave.

8. It is observed that since the applicant is placed at the Rajkot Jail and children are at Halvad, the jail authorities shall make proper arrangement to facilitate the movement of the applicant to go to Halvad.

8.1 It is further provided that and made clear that in the eventuality that during the bail period, the applicant-Gangaben B is T not W able to make alternative arrangement for her two children, the concerned institute named Swami Gurukul Ashram shall make necessary arrangements for re-admitting the children by taking their custody back as per the guidelines and norms of the Government.

9. While granting temporary bail to applicant-Gangaben by this order, we are guided by the fact *inter alia* that the relative Shankarbhai has not shown readiness to keep and maintain the children of the applicant beyond five days. Custody of the children may be given to the Child Care Home concerned, if alternative arrangement is not made by

the applicant. We make it clear that on the repeat plea that a relative has taken custody of the children but such relative is not willing to keep the children beyond the period, shall not be a ground permissible to be advanced for seeking temporary bail again-and-again.

10. The present application is accordingly allowed.

11. Since the application is through jail, the Registry shall communicate this order to the jail authority. Learned Additional Public Prosecutor shall also intimate the order to the authorities concerned.

(N.V.ANJARIA, J)

(DR. ASHOKKUMAR C. JOSHI, J)

Anup

THE HIGH COURT
OF GUJARAT

WEB COPY