

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC. APPLICATION NO. 8266 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE BELA M. TRIVEDI

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	Yes
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	Yes

SHAH VIJAYBHAI ARVINDBHAI

Versus

STATE OF GUJARAT

Appearance:

MR ND NANAVATI, LD. SR. ADVOCATE WITH MR ASHISH M DAGLI(2203)
for the Applicant(s) No. 1

MS MOXA THAKKAR, APP for the Respondent(s) No. 1

CORAM: **HONOURABLE MS. JUSTICE BELA M. TRIVEDI**

Date: 26/06/2020

ORAL JUDGMENT

1. The present application has been filed by the applicant Shah Vijaybhai Arvindbhai, seeking anticipatory bail under Section 438 of Cr. P.C.,

in respect of the FIR being No.11215021200321 dated 1.5.2020 registered before the Petlad Town Police Station for the offence under Sections 143, 145, 332, 504, 186, 147, 153, 269 of IPC and also under Section 13(1) of Gujarat Epidemic Disease-19 Regulation, 2020 and Section 3 of the Epidemic Diseases Act, 1897.

2. The chronology of events leading to passing of the present order may be summarized as under:-

(i) On 15.6.2020, this Court had issued Notice making it returnable on 22.6.2020.

(ii) On 22.6.2020 at about 8.55 a.m., the undersigned received a call on her mobile from the mobile No.9924327466. The caller had introduced himself as "Niranjanbhai Patel, MLA, Petlad".

(iii) The Court narrating the incident passed a detailed order directing the Registrar (IT) to obtain the call details of the said number.

(iv) On 23.6.2020, the Court after perusing the call details of the said mobile number in question, as submitted by Registrar (IT) found that it was ported to JIO Mobile Services by the Subscriber Tofik Vhora, Anand. The Court, therefore, directed the Superintendent of Police, District Anand to get the statements of Mr.Niranjanbhai Patel, MLA, Petlad and of Tofik Vhora recorded and submit to the Court on

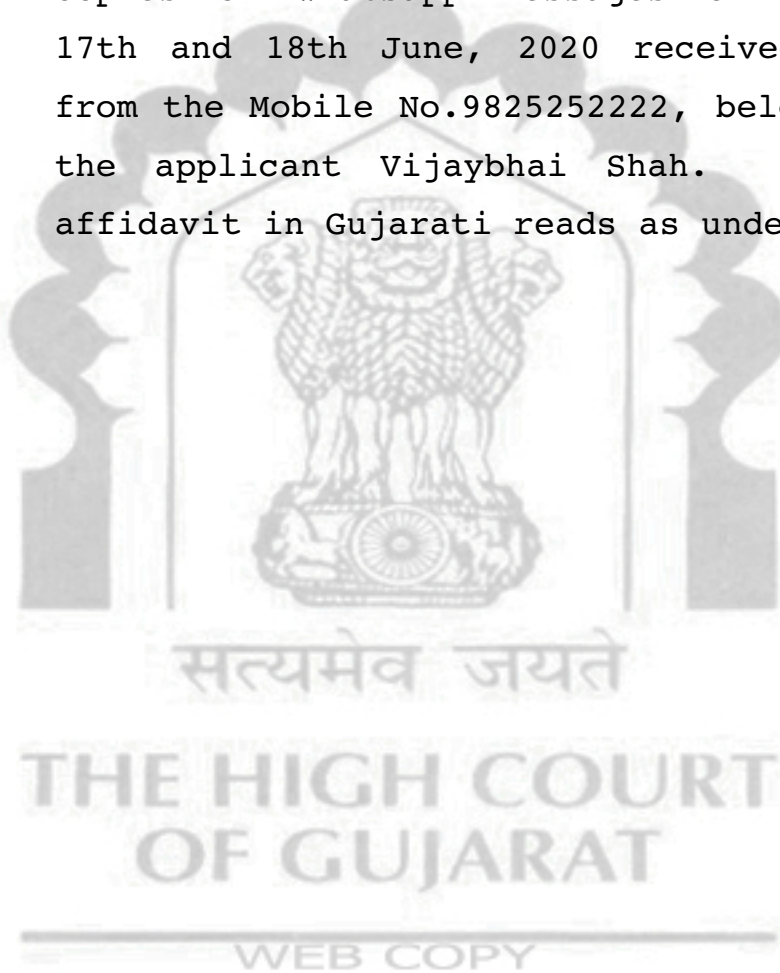
24.6.2020.

(v) On 24.6.2020, on perusing the said statements of Mr.Niranjanbhai and Mr.Tofikbhai, the Court found certain queries, and therefore, asked learned APP Ms. Moxa Thakkar as to whether Mr.Solanki, Deputy Superintendent of Police could be joined through video conferencing to answer the queries of the Court, however, due to some connectivity problem, he could not be joined. The Court, therefore, directed the Superintendent of Police, Deputy Superintendent of Police and PSI to remain in the office of the Superintendent of Police, Anand on the next day i.e. on 25.6.2020 for being joined through video conferencing.

(vi) On 25.6.2020, the Superintendent of Police, Anand along with Deputy Superintendent of Police and PSI had joined the hearing through video conferencing, and at that time, the Superintendent of Police stated that there were two other persons present in his office i.e. Tofik Vhora and one Alpesh Rameshbhai Patel, who had said to have made the call in question in the name of Niranjanbhai Patel, MLA, Petlad on 22.6.2020 from the mobile of Tofikbhai. At the request of the Superintendent of Police, the said Alpesh Patel was permitted to address the Court. The gist of his

version was noted down by the Court in the order passed on 25.6.2020 and the said Alpesh was directed to file the affidavit in detail by 26.6.2020 i.e. today.

(vii) Today the said Alpeshbhai Patel has forwarded his affidavit, along with the copies of whatsapp messages of the date 17th and 18th June, 2020 received by him from the Mobile No.9825252222, belonging to the applicant Vijaybhai Shah. The said affidavit in Gujarati reads as under:-



સોગંદનામું

આથી હું નીચે સહિ કરનાર અલ્પેશ રમેશભાઈ પટેલ ઉ.વ.૩૯ ધંધો- ખેતી રહેવાસી-૩૭ પ્રીત રેસીડન્સી, ઉમિયા વિજય શો મીલના ખાંચામાં જીટોકીયા રોડ, મો.નં.૯૨૬૫૯૧૯૭૪૧ / ૯૮૨૫૮૬૪૩૮૮. તે આજરોજ આણંદના મે.નોટરી પબ્લીક સાહેબ સમક્ષ રૂબરૂ હાજર થઇ મારા ધર્મના સોગંદ ઉપર જાહેર કરી જણાવીએ છીએ કે,

હું ઇન્સ્યોરન્સ સર્વેયર તરીકે તથા ખેતી કામ કરું છું મારા મિત્ર નિમેષભાઈ નટવરલાલ પટેલ રહે-આણંદ, પારીજાત એપાર્ટમેન્ટ, વ્યાયામ શાળા રોડ નાઓએ મને સર્વેયરની ટ્રેનીંગ આપેલ હોય જેથી જે મારા ગુરૂ તથા મિત્ર થાય છે અને તેઓએ મને આશરે બારેક દિવસ પહેલા ફોન કરી રીકવેસ્ટ કરેલ કે, મારા મીત્ર રાજેશભાઈ સોલંકી જે આગમન સોસાયટીમાં રહે છે તે તને મોબાઇલ ઉપર ફોન કરશે તો તેમનું કામ કરી આપજે તેમ જણાવેલ અને ત્યારબાદ તા.૧૫/૦૬/૨૦૨૦ ના રોજ રાજેશભાઈ સોલંકીનો ફોન મારા ઉપર આવેલો અને તેમણે ફોનમાં જણાવેલ કે વિજયભાઈ શાહ પેટલાદમાં રહે છે તે મારા મિત્ર થાય છે જેઓ તમને મળવા માંગે છે તો તમે ટાઇમ આપો તે પ્રમાણે બોલાવી લઉં જેથી મેં બીજા દિવસે તા.૧૬/૦૬/૨૦૨૦ ના રોજ સવારના સાડા દસ થી અગ્યાર વાગ્યા નો સમય આપેલો. બીજે દિવસે રાજેશભાઈ સોલંકીનો મારા ઉપર સવારના સાડા દસ અગીયાર વાગે ફોન આવેલો કે વિજયભાઈ મારા ઘરે આવી ગયેલા છે જેથી હું રાજેશભાઈના ઘરે ગયેલો ત્યારે રાજેશભાઈના ઘરે વિજયભાઈ તથા તેમના પત્ની વિજ્ઞાત્રીબેન હાજર હતા અને મિટીંગ કરેલી અને આ મિટીંગમાં વિજયભાઈએ જણાવેલ કે, મારી ઉપર ત્રણ એફ.આઇ.આર.દાખલ થયેલ છે અને અમારા જ કાર્યકરો જેમાં પેટલાદ ધારાસભ્ય નિરંજન પટેલ કે જેઓએ કાર્યકરોને આગળ કરી અમારા વિરુદ્ધ ખોટી એફ.આઇ.આર દાખલ કરાવેલ છે જેથી અમોએ આ બાબતે અમદાવાદ હાઇકોર્ટમાં આગોતરા જામીન માંગેલ છે અને તેની મુદત તારીખ.૨૨/૦૬/૨૦૨૦ ની મુદત છે અને ગુજરાત હાઇકોર્ટમાં બેલાબેન ત્રિવેદી સાહેબ જજ છે અને તેમની કોર્ટમાં આ મેટર છે અને તમારે નિરંજન પટેલ ધારાસભ્ય પેટલાદના નામથી બેલાબેન ત્રિવેદી સાહેબને ફોન કરવાનો પરંતુ તમારે સાવચેતી રાખવાની કે, તમારા ફોનથી ફોન કરવાનો નહીં અને બીજા કોઇ નંબરથી ફોન કરવાનો અને ફોનમાં કહેવાનું કે, નિરંજનભાઈ પટેલ પેટલાદ એમ.એ.એલ બોલુ છું આ લોકોને આગોતરા જામીન મળવા જોઇએ નહીં આ રીતની વાત કરશો તો અમને આગોતરા જામીન મળી જશે તેવી વાત થયેલી. ત્યારપછી વિજ્ઞાત્રીબેન મને તેમના મોબાઇલ નંબર.૯૮૨૫૨૫૨૨૨૨ પરથી આ કેસની વિગત વોટ્સએપ કરેલી. ત્યારબાદ મને વિજયભાઈ શાહ નાઓએ કોઇ બીજા નંબરથી તા.૨૦/૦૬/૨૦૨૦ ના રોજ બેલાબેન ત્રિવેદી સાહેબનો મોબાઇલ નંબર ફોન કરી લખાવેલો અને ત્યારપછી મેં તા.૨૨/૦૬/૨૦૨૦ ના



અલ્પેશ રમેશભાઈ પટેલ

સવારે નવ વાગ્યાની આસપાસ આણંદ મહેન્દ્ર શાહ હોસ્પિટલની નજીક આવેલ ફેઝ ઝેરોક્ષ તથા ફેઝ મોબાઇલ નામની દુકાનમાં ગયેલો જેમાં એક ભાઈ હાજર હતો તેને મેં એસ.ટી.ડી પી.સી.ઓ બાબતે પુછતા તેણે જણાવેલ કે અહિં એસ.ટી.ડી પી.સી.ઓ ની કોઈ વ્યવસ્થા નથી જેથી મેં તેમને જણાવેલ કે મારે દિલ્હી અરજન્ટ ફોન કરવાનો છે જો તમે તમારા મોબાઇલ થી ફોન કરવા દો તેમ જણાવેલ જેથી તે ભાઈએ મને ફોન કરવા દીધેલ તેમનો ફોન લઈ મેં વિજયભાઈએ આપેલા ફોન નંબર ઉપરથી જજ બેલાબેન ત્રીવેદી સાહેબને ફોન કરી હું નિરંજનભાઈ પટેલ ધારાસભ્ય પેટલાદ બોલુ છું મેટર વિશે વાત કરવી છે તેમ જણાવતા સાહેબે જણાવેલ કે તમે આવો ફોન મને ના કરી શકો તેમ કહી ફોન કટ કરેલ અને ત્યારબાદ મેં બે વખત કોલ કરેલો પરંતુ સાહેબે ઉપાડેલો નહીં જેથી ટેક્સ મેસેજ કરેલ કે કીમીનલ એપ્લીકેશન નંબર: ૮૨૬૬/૨૦૨૦ વિજયભાઈ અરવિંદભાઈ શાહના આગોતરા જામીન રીજેક્ટ કરવા જે અંગ્રેજીમાં લખી મેસેજ મોકલેલ ત્યારબાદ મેં દુકાનદારના મોબાઇલ નંબર પરથી કરેલ કોલીંગ તથા ટેક્સ મેસેજ ડીલીટ કરી નાંખેલા અને મેં દુકાનદારને તેનો મોબાઇલ ફોન પાછો આપી દિધેલો અને ફોનના બદલામાં પૈસા આપવાનું જણાવતા તેઓએ પૈસાની ના પાડેલી જેથી મેં તેઓની દુકાન માંથી રોયલ મુખવાસની પડીકી ત્રીસ રૂપિયાની ખરીદેલ અને ત્યાંથી નિકળી ગયેલ ત્યારબાદ દસેક મીનીટ પછી મેં વિજયભાઈને ફોન કરેલો અને જણાવેલ કે, કોલ થઈ ગયો છે અને મેસેજ પણ એસ.એમ.એસ. થી કરેલો છે જેથી બેલગ્રાન્ટ થઈ જશે તેમ જણાવતા વિજયભાઈએ કામ પતી જાય પછી જે વ્યવહાર થશે તે સમજી લઈશું તેમ જણાવતા મેં ફોન કટ કરેલો. ત્યારબાદ બપોરે એક વાગ્યાની આસપાસ વિજયભાઈનો ફોન આવ્યો હતો કે, વકીલ મારફતે મને મેસેજ મળેલ છે કે, ઇન્ડવાયરી મુકી દીધી છે તે આપણા માટે ફાયદાકારક છે. ત્યારબાદ તા.૨૩/૦૬/૨૦૨૦ ના રોજ જ્યારે હું ડાકોર હતો ત્યારે સાંજના પાંચ-સવા પાંચેક વાગે વિજયભાઈએ મને ફોન કરી જણાવેલ કે, તમે ફોન કરેલો તેમા કોઈ ઇન્ડવાયરી મુકી દીધેલ છે તેમાં તમે ચેતતા રહેજો. બાદ રાજેશભાઈ સોલંકીનો પણ સાડા પાંચેકની આસપાસ ફોન આવ્યો હતો કે, સાવચેત રહેજો. ત્યારબાદ ગાંધીનગર જતો રહેલો ત્યાં ગાંધીનગર એલ.સી.બી. પોલીસે મને પકડીને આણંદ એલ.સી.બી. પોલીસને સોંપી દીધેલો.

ઉપરોક્ત લખેલ તમામ હકિકત મારા માનવા તથા જાણવા મુજબ સાચી અને ખરી છે. ખોટું સોગંદનામું કરવું તે ગુનો બને છે તેની મને જાણ છે.

તારીખ:-૨૫/૦૬/૨૦૨૦.

સ્થળ:-આણંદ.



પટેલ.અરવિંદ.રમેશભાઈ
Date: 25/06/2020 Reg. No. 6982/2020
Page No. 403 Solemnly Affirm Declared
A. R. Patel Anand
Who is Identified by _____
Who is knew personally _____
S. M. VAHORA
NOTARY

3. Today, when the matter was taken up for hearing, the learned Sr. Advocate Mr.N. D. Nanavati and the learned Advocate Mr.Dagli appearing for the applicant categorically stated that they can not defend the applicant any more, having regard to the facts and circumstances, which have come on record.
4. Since the whatsapp messages sent by the said Alpesh Patel along with his affidavit through email were not clearly legible, the Superintendent of Police, Anand was again joined through video conferencing and he was requested to send the said whatsapp messages again on the mobile phone of the Court Master. Accordingly, the same were sent. On the query put by the Court to the learned Advocate Mr.Dagli, he had stated that the applicant Vijaybhai Shah used to call him from his Mobile No.7874992222 and 9825222222. The learned APP Ms. Moxa Thakkar states that as per the True Caller information, Mobile No.9825252222 belongs to Vijay Shah and Mobile No.9825222222 belongs to one Mr.Harsh Singhvi, MLA.
5. From the afore-stated twists and turns, which have surfaced on record, it appears that the name of Niranjanbhai Patel, MLA, Petlad was sought to be used by the applicant Vijay Shah for misleading the Court. The learned Advocate Mr.Dagli, right from the beginning, had

submitted on the instruction of the applicant that the said Niranjana Patel was interested in getting the applicant arrested, and therefore, he must have made the call and sent the messages, whereas from the affidavit filed by the said Alpesh Patel, it clearly transpires that such a submission was made only with a view to mislead and prejudice the Court. As transpiring from the affidavit of Alpeshbhai, the call in question was made by him at the instance of the applicant Vijay Shah, who had advised Alpeshbhai to make the call in the name of Niranjana Patel from the STD-PCO shop. The details of the case were also given by the wife of Vijay Shah, from his mobile No.9825252222 on 17.6.2020 as per the copy of whatsapp message produced on record along with the affidavit of Alpeshbhai. The said Alpeshbhai categorically has admitted in the affidavit that the mobile number of the undersigned was also given by Vijay Shah only on 20.6.2020. Thereafter on 22.6.2020 when the matter was to be heard, he had gone to the shop of Tofikbhai situated near the hospital of Dr. Mahendra Shah at about 9 O'Clock in the morning and had made the call to the undersigned using the mobile phone of the said Tofikbhai. He has also stated that in the phone he only had introduced himself as Niranjana Patel, MLA, Petlad as told by Vijaybhai, and when he was trying to mention about the case, the phone was

cut by the undersigned by saying that he could not have made such call to the undersigned. He thereafter had called twice, but the phone was not picked up by the undersigned. Thereafter, he had sent a text message to the effect that Criminal Misc. Application No.8266 of 2020 filed by Vijay Arvind Shah was fixed today (i.e. 22.6.2020) and he should not be granted anticipatory bail. He also has stated that thereafter he had deleted the call and the text messages from the said mobile phone of Tofikbhai while returning the phone to him. Ten minutes thereafter he had intimated Vijay Shah that he had made the call and also sent the message and that he would be granted bail. At that time Vijay Shah had told him that they will understand the vyavhar (whatever was to be given to be him) after the work is over. He has further stated that thereafter at about one o'clock Vijay Shah called and informed him that his Advocate had intimated him (i.e. Vijay Shah) that the Court had directed inquiry in the matter which would be in their benefit, however, in the evening at about 5:00 p.m., again Vijaybhai called him and intimated him that since the Court had directed inquiry, he should be careful. Rajesh Solanki also called him that he should be more careful. Alpeshbhai thereafter, had left for Gandhinagar, however, was caught by the LCB Gandhinagar and was handed over to the LCB Anand.

6. It is apposite to mention that there is no defence raised or affidavit filed on behalf of the applicant Vijaybhai controverting the version of Alpeshbhai. On the contrary, as stated herein above, the learned Senior Advocate Mr. N.D. Nanavaty and learned advocate Mr. Dagli appearing for the applicant have refused to make any submissions to defend the applicant.
7. From the aforestated facts and circumstances, it clearly emerges that in a well designed but ill-motivated mission to get the order of anticipatory bail, the applicant Vijay Shah had tried to implicate Mr. Niranjambhai Patel who according to Mr. Dagli was his rival in the case and tried to mislead the Court. However, an unsuccessful attempt of applicant to obtain the order of anticipatory bail de hors following the due process of law, has not only invited the ire of the Court but has rendered himself along with the said Alpesh Patel prima facie liable for committing contempt of Court. At this juncture, it may be noted that any act whatsoever which prejudices or interferes or tends to interfere with the due course of any judicial proceedings, or any act which interferes or tends to interfere the administration of justice in any manner, would amount to "criminal contempt" within the meaning of section 2(c) of the Contempt of Courts Act, 1974.
8. In the instant case, the applicant Vijay shall by asking the said Alpeshbhai Patel to make the

call to the Judge before whom his application was listed for hearing, in the name of his rival Mr. Niranjanbhai Patel in order to prejudice the Judge and get anticipatory bail, and the said Alpeshbhai having acted so at the instance of the applicant Vijaybhai had committed the acts, which were intended to interfere with the judicial proceedings and the administration of justice as discussed herein above, and therefore, have prima facie made themselves liable for committing the "criminal contempt" under section 2(c) of the said Act.

9. It may be noted that when the Justice delivery system is facing unprecedented multiple challenges at the hands of tech-savy criminals, any attempt to corrupt or to fail the Justice delivery system has to be dealt with very stringently. In the instant case, the applicant who is shown as the accused in connection with the FIR in question, was desirous of obtaining the order of anticipatory bail any how, has been trapped in his own net laid for trapping others. The applicant had also tried to impress upon the Court through his Advocate Mr. Dagli that Mr. Niranjanbhai Patel was interested in his arrest and he must have made the call to the undersigned on the day when the hearing was fixed, whereas, it was the applicant himself who in his ill-motivated and ill-advised plan, had asked the said Alpesh to make a call in the name of Niranjanbhai Patel, MLA, Petlad to prejudice

the mind of the Court and to mislead the Court that Mr. Patel wanted his anticipatory bail application to be dismissed. The applicant Vijay Shah would have thought that by doing so either he would win the sympathy of the Court and would get the anticipatory bail, or the Court might transfer the case on being prejudiced by such call made in the name of Niranjanbhai Patel, MLA. Such conduct on the part of the applicant is highly deplorable and unpardonable. The application of the applicant who has no respect for the Justice delivery system and no regards for truth cannot be entertained any further and deserves to be dismissed on that ground alone.

10. At this juncture, it may be noted that the judicial functions cannot be and should not be permitted to be obstructed or hindered by the malpractices or tactics of the litigants or of their counsels. As has been repeatedly observed by the Apex Court, the rule of law is the foundation of the democratic society and the Judiciary is the guardian of the rule of law. The confidence which the people repose in the Courts, cannot be allowed to be undermined, tarnished or diminished by the contemptuous behaviour of any litigant. The foundation of judiciary is the trust and the confidence of the people in its policy to deliver fearless and impartial justice. When the foundation itself is sought to be shaken by the acts which tend to

create disaffection and disrespect for the authority by creating distrust in its working, the very edifice of the judicial system gets eroded. It is for this purpose that High Courts are entrusted with the extraordinary powers under Article 215 of the Constitution, of punishing for the contempt of Courts, those who indulge in the acts which tend to undermine the authority of law or to scandalize the Court. As observed by the Apex Court in the case of **Rajendra Sail versus M.P. High Court, Bar Association reported in (2005) 6 SCC 109**, when the Court exercises this power, it does not do so to vindicate the dignity and honour of the individual Judge, but to uphold the majesty of law and the administration of justice.

11. The court having found that the present applicant Vijay Shah and the said Alpesh Patel have prima facie committed the "criminal contempt" within the meaning of Section 2(c) of the Contempt of Courts Act, the Court takes suo moto cognizance thereof under Section 15 of the said Act.

12. In the afore-stated premise, following order is passed : -

(A) The Criminal Misc. Application No. 8266 of 2020 is dismissed.

(B) The Office is directed to register the Sua Moto motion as the Sua Moto contempt proceedings under Article 215 of the Constitution of India

read with section 15 of the Contempt of Courts Act, 1971 for the purpose of record.

(C) The Office is directed to issue notice under section 17 of the Contempt of Courts Act to Vijay Arvindbhai Shah and Alpesh Rameshbhai Patel at the addresses available on record, through the Superintendent of Police, Anand, as per the Contempt of Courts (Gujarat High Court) Rules, 1984. The notices shall be accompanied by the instant order and the record of this case to be made returnable on 10.07.2020.

(D) Since every case of criminal contempt under section 15, is required to be heard and determined by the Bench of not less than two Judges as per section 18 of the said Act, the Office is directed to place the matter before the Chief Justice for necessary consideration.

सत्यमेव जयते

THE HIGH COURT
OF GUJARAT

SINDHU NAIR/vinod

Sd/-
(BELAM. TRVEDI,J)

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