

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4297 OF 2017

Chotu Vansa Vartha and Ors.

.....Petitioners

V/s.

The Union Territory of

Dadra and Nagar Haveli and Ors.

....Respondents

Mr. Nitin Pradhan a/w. Ms. Varsha Palav a/w. Mr. Balkrishna Joshi i/by. The Laureate, Advocate for the petitioner.

Ms. P.H. Kantharia, Special Public Prosecutor a/w. Ms. Deepali Patankar, Advocate for respondent no.1.

Mr. Vindo Chate, APP for the respondent, State.

Mr. Sebastian Devasia, PI Crime Branch present.

**CORAM :- SANDEEP K. SHINDE, J.
(VACATION JUDGE)**

DATE : 18TH OCTOBER, 2017.

P.C. :-

1. That vide order dated 9th October, 2017 the Learned Chief Judicial Magistrate, Silvassa refused to remand the petitioner, accused in C.R. No. 186 of 2017 to the

police custody; but remanded them to magisterial custody till 23rd October, 2017. Aggrieved by it, respondent no.1 i.e. Union Territory , Dadra and Nagar Haveli had preferred a Criminal Revision Application No. 21 of 2017 before the Sessions Court, Dadra and Nagar Haveli at Silvassa on 10th October, 2017. The said Revision was heard by the Learned Sessions Judge on 10th October, 2017. It appears from para no.4 of the order, that in the course of the hearing of the Revision Application, the Learned Public Prosecutor informed the learned Sessions Judge that the present petitioners were granted bail vide order dated 10th October, 2017 by the Learned Chief Judicial Magistrate, Silvassa.

2. The Learned Sessions Judge besides, recording the reasons as to why the applicants/petitioners were required to be remanded to the police custody also dealt with the order dated 10th October, 2017, whereby the petitioners were released on bail. The Learned Sessions Judge in the said para has observed thus :

“. However, on perusal of the bail order, it appears that the Ld. Chief Judicial Magistrate in a

very hasty manner proceeded to hear bail application without waiting final decision in the Criminal Revision Application preferred against the order of refusal of police custody remand which shows that the Ld. Chief Judicial Magistrate acted very prejudicially and showing favour to the accused persons and restraining the Investigation Officer from collecting evidence.”

3. The Learned Sessions Judge allowed the Revision Application vide order dated 10th October, 2017 and set aside the remand order dated 9th October, 2017 and in consequence thereof, remanded the petitioner to the police custody. It appears, the Learned Sessions Judge has also set aside the order dated 10th October, 2017, whereby the petitioners accused nos.1 to 3 were enlarged on bail. Resultantly, the petitioners were remanded to police custody and as such petitioners were not released from custody.

4. Aggrieved by the order dated 10th October, 2017, the present petition is preferred.

5. Heard Learned Counsel for the petitioner and the Learned APP for the State.

6. It is not in dispute that the subject revision was preferred by the respondents, against the order remanding

the petitioners to the magisterial custody and thereby denying their police custody. It is not in dispute that, order enlarging the petitioners on bail was not the subject matter of the Revision Application No. 21 of 2017. The Learned Sessions Judge in the very revision proceedings cancelled the order dated 10th October, 2017 whereby the petitioners were directed to be released on bail. In my view, the order to the extent of cancelling the bail was obviously without jurisdiction and thus illegal. The Learned Sessions Judge could not have exercised the powers under Section 439 (2) in the said Revision Application No. 21 of 2017. It is admitted fact that, there was no separate application preferred by the respondent for cancellation of bail. That as such, the order is unsustainable and accordingly the order cancelling the bail granted to the petitioners by the Chief Judicial Magistrate is hereby set aside. In the result, the order dated 10th October, 2017 passed by the Learned Chief Judicial Magistrate, Silvassa stands restored and as such, the respondents are directed to release the petitioners in

terms of the order dated 10th October, 2017. It is made clear that, the respondents are at liberty to take appropriate proceedings for cancellation of bail, if they are so advised by adopting appropriate proceedings. With the aforesaid observations, the writ petition is allowed to the extent as aforesaid and disposed off accordingly.

7. Parties to act on a copy of this order duly authenticated by the Sheristedar of the court.

(SANDEEP K. SHINDE, J)