

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INTERIM APPLICATION NO.1419 OF 2020

IN

CRIMINAL APPEAL NO. 480 OF 2004

Amarsing Bhoga Solanki,	)	
Age: 55 years, Occ:Business	)	
R/o. "Mangarh", Devdi Road,	)	
Kodinar, Gujarat	)	
Partner M//s. Rajmoti Petroleum, Diu.	)	 Applicant/Original Accused

IN THE MATTER BETWEEN

1. Union Territory of Diu, Through: State) ... Appellant/Ori. Complainant

Versus

1. Amarsing Bhoga Solanki,	)	
2. State of Maharashtra	)	... Respondent

Mr. Sujay Kantawalla a/w Mr. Subhash Jadhav and Mr. Chandansingh Shekhawat i/b Parinam Law Associates for Applicant/Original Respondent No.1

Mr. Hiten Venegaonkar for Respondent No.1/Original Appellant.

Ms. Malhotra, APP for Respondent No.2/State of Maharashtra.

CORAM : K.R.SHRIRAM, J.

DATED : 21st DECEMBER 2020.

P.C. :

1. This is an application for bail by Respondent No. 1 in Criminal Appeal No. 480 of 2004. The appeal challenging order dated 27th January 2004 passed by the Chief Judicial Magistrate, Diu, acquitting the applicant in Regular Criminal Case No. 59 of 2001, where the applicant was charged of offence punishable u/s 406, 409, 468 and 477-A of the Indian Penal

Code, was admitted by this Court on 2nd November 2004. On the date of admission, Registry was directed to initiate action under section 390 of Cr. P.C. That remained to be complied with. On record there is an office submission, inter-alia, mentioning that during lock-down, while scrutinizing the appeals, it was noticed that there is non-compliance of the order dated 2nd November 2004. Accordingly, on necessary sanction from the concerned official, fresh warrant was issued on 12th August 2020. In respect of execution of warrant of arrest, it is stated in the praecipe that warrant of arrest has been executed against the applicant in the month of August 2020.

2. The action u/sec. 390 of Cr.P.C. had been directed to be initiated way back in the year 2004. As held in ***Farooq Abdul Gani Surve Versus The State of Maharashtra***¹ where the warrant of arrest is executed under Section 390 of Cr. P. C. in all such cases, accused persons are entitled to bail as a matter of right. Paragraph No. 11 of the judgment reads thus:

“11. The High Court, therefore, has discretion of issuing warrant under section 390. In our view, the said warrant need not necessarily be non-bailable warrant, though section states that he has to be produced before the Trial Court, which would ordinarily mean that the said warrant would be a non-bailable warrant. Secondly, since the power is vested in the High Court, the High Court also would be in a position to direct that the accused when produced before the Trial Court may be released on bail on his execution of P. R. Bond with or without sureties. The High Court or Trial Court may also release him on execution of the bond and surety which was offered during pendency of the trial. The

*High Court would be empowered to do so in view of the language used in section 390 and also, in our view, on account of inherent power vested in it under Section 482 of Cr. P. C. The Division Bench of this Court in **State of Maharashtra Versus Bapu Pandu Mali** 2010 ALL MR (Cri) 120 noticed that though the accused was acquitted by the Trial*

Court he languished in jail for a period of five years. The Division Bench has observed in paras 3, 4, 5 and 6 of its judgment as under:-

“3. This is a sorry state of affairs in which not only the prosecuting agency but also the Courts are involved. This is a reflection on our own system, which needs to be corrected. A person, who is acquitted of the charges by a Court of law, should not remain in jail even for a day after acquittal, unless the order of acquittal is reversed by an appellate court. Even if the acquittal of the respondent were to be set aside by this Court today, even then, we cannot justify his detention after his acquittal by the Sessions Court till date.

4. We have perused Section 390 of the Criminal Procedure Code, which section only lays down a mechanism by which section it is ensured that an acquitted person does not abscond while an appeal is filed against his acquittal. Therefore, we do not feel that there should be any impediment for Courts to release the persons who are acquitted during the pendency of the appeals against acquittal.

5. After hearing the learned amicus curiae and the learned Additional Public Prosecutor.

We give the following directions:-

That in case of warrant under Section 390, the Session Judge, on production of the persons, shall immediately offer him bail on conditions which are just and proper, and in appropriate cases, the Sessions Judge may also consider release of such persons on personal bond. However, if the learned Sessions Judges are of the view that the surety is not produced or surety is not sufficient,

they would remand the persons to the prison. In that case, they should inform the High Court immediately that the person has been remanded to the custody in case originally, the warrants are issued by the High Court.

6. We are told that such directions were given in year 2004 also, but the learned Sessions Judges have not been following these directions. Therefore, in case, in future, any Sessions Judge is found not to follow the directions, besides taking departmental action against such learned Session Judge, he shall also be liable to contempt of this Court.”

3. It is settled position in law that when a person is acquitted, he cannot be detained merely because an action under Section 390 of Cr. P.C. is ordered. In such cases bail has to be granted as a matter of right. Whereas, when in such cases, accused approaches trial court for granting bail, the trial court has only two options, either to release him on bail or in the event, he is unable to furnish the bail amount or surety or both, or in view of the trial court, the surety is not sufficient to release him on bail then commit him to prison and report to High Court. But, under no circumstances trial court can direct the accused to approach this court. In the instant case, the Applicant approached to the Ld. Chief Judicial Magistrate, Diu (trial court), who instead of opting either of the recourse available in law directed the applicant to approach this court. Record indicates that appellant is also not represented on last few hearings before this court.

4. Considering all the above circumstances and facts of the case, I am inclined to allow the application in terms of prayer clause (a) of the Interim application. Applicant in Interim Application No.1419 of 2020, Amarsing Bhoga Solanki is granted bail in connection with Regular Criminal Case No. 59 of 2001, on following terms and conditions:

(a) Amarsing Bhoga Solanki be released upon furnishing cash bail amount of Rs.25,000/- (Rupees Twenty Five Thousand Only) and surety of like amount. Amarsing Bhoga Solanki shall appear before the trial court for furnishing the bail, surety and PR bond.

(b) Until final disposal of Criminal Appeal No. 480 of 2004, Amarsingh Bhoga Solanki shall not leave the territory of India without prior permission of this Court.

(c) Until final disposal of Criminal Appeal No. 480 of 2004, Amarsingh Bhoga Solanki Shall report to the police station where the FIR was lodged once in two months.

(d) Amarsingh Bhoga Solanki shall appear before the trial court or this court, whenever called upon to do so.

5. Accordingly, interim application stands disposed.
6. Applicant also present on line in the office of Mr.Kantawalla and sitting next to him. Applicant states that he understands English and also understands the conditions which were told to Mr. Kantawala.
7. As per office endorsement, registry is in receipt of records and proceedings from the trial court and appeal is ready for hearing and final disposal.
8. Appeal be listed for hearing on 4th January 2021.

(K.R. SHRIRAM, J.)