

**1990(1) G.L.H. 352
R. A. MEHTA, J.**

Inspector of Customs and Another ... Petitioners
Versus
Umar Haji Hasen and Another ... Opponents

Special Criminal Application No. 1262 of 1988 (with Misc. Criminal Application No. 25 of 1989)

D/- 23-2-1989*.

*Praying to stay the execution, operation and implementation of order of JMFC releasing Opponent No. 1 on bail.

Code of Criminal Procedure, 1973 - S. 439 Magistrate releasing on bail an accused alleged to be involved in smuggling activity of large magnitude - Magistrate releasing accused on bail at crucial stage of investigation although there was *prima facie* case against him - Meld on facts, bail granted was required to be cancelled.

Before the learned Magistrate who granted bail it was submitted that ten years ago the respondent was involved in an incident of huge quantity of snake skins and he was penalised for the same. On behalf of the accused it was submitted that an appeal against the order of penalty was pending and that thereafter there is no incident in 10 years and that he is democratically elected public worker and thus he has completely reformed himself and in such circumstances if he was not released on bail his mind was likely to be perverted and that he should be given additional opportunity in accordance with reformatory theory. The learned Magistrate completely agreed with such arguments. The reasons of the learned Magistrate about lack of *prima facie* case as well as consideration of reformatory theory and the respondent being a public figure, are thoroughly erroneous and perverse. In transactions of such a magnitude it is very difficult to get direct physical involvement with prime persons. It is true that the respondent was not found with the gold, but is apparent from statement of crew member of the country craft that the smuggled gold was meant to be delivered to the respondent No. 1. The learned Magistrate has not given any effect to the statement that respondent No. 1 and his brother were the recipients of the smuggled gold. Therefore, the finding of the learned Magistrate that there is no *prima facie* case is utterly baseless and erroneous. At this stage for consideration of bail, the Court is not required to give any finding that there is a certainty of conviction but on the material on record it can certainly be said that there is a *prima facie* case against the respondent-accused, and there is sufficient material to try the respondent accused for the offence. The learned Magistrate has also not appreciated the fact that the incident occurred on 2-12-1988 and on 14-12-1988 he has passed order for release of the accused on bail when the investigation was at a very crucial stage and at this stage the release of persons who were alleged to be accused recipients of huge quantity of gold will be detrimental to the course of investigation. Since learned Magistrate has illegally and without valid reasons granted the bail the order is required to be set aside. (Paras 20 , 23)

(B) Code of Criminal Procedure, 1973 - S. 439(2) - Cancellation of bail for breach of conditions granting bail - Accused making himself scarce after being released and flouting conditions for reporting before authorities - Accused also found to be advancing excuses for not presenting himself before the authorities as directed - Bail liable to be cancelled.

The learned Magistrate by order dated 14-12-88 released respondent No. 1 on bail on several conditions including a condition to record his presence at Customs Office at Porbandar on 1st and 15th of every month. On 21-12-1988 the High Court directed that [/@page352] respondent-accused should mark his presence everyday instead of every fortnight. Even though the accused was subjected to condition (by the Magistrate) that he shall be available for interrogation whenever required by the Customs authorities, the accused made himself scarce and was not available for service of the order of the High Court directing him to remain present everyday and his whereabouts were said to be not known even to his family members. The brother of the

accused has filed affidavit producing a medical certificate from a doctor at Bombay certifying that accused was under his treatment from 22-12-88 for foot injury and was advised rest upto 16-1-1989. Subsequently other medical certificates are also produced regarding treatment and advice for rest. The story of illness and medical treatment has turned out to be a mere excuse or keeping away from the compliance of conditions of the bail as is evidence from the fact that on 10-1-89 the accused went to Calcutta and moved an application in Calcutta High Court for interim order against his apprehended detention under COFEPOSA. (Paras 3 to 9 , 12)

Brother of the accused (who alongwith accused was alleged to be recipient of smuggled gold) has filed affidavits before Bombay High Court that he could not comply with conditions of bail on account of illness of his mother and her insistence that he remain in Ajmer to offer prayers at the Dargah there. Both the brothers have parallel make-believe stories for identical purpose. Strangely the story about mother's illness does not find any place in the story of present respondent. Both the brothers are in Bombay, then one brother receives a telephone call about serious illness of mother but the other brother (present respondent) does not get that information. Even though he is aware of the High Court's order that he has to report daily at Porbandar to Jam Khambhalia he does not care to report his whereabouts, does not care to seek any extension/modification and on false excuse remains away from law and law-enforcing officers and deliberately flouts the conditions of bail. The story of his illness seems to be a bogey in view of the fact that he did not go to Bombay hospital as directed. He has not produced any medical evidence in that respect and he did not have any history or past record and does not show that he has serious heart ailment. Once the story of illness and excuses falls to ground, it is clear that he has deliberately and willfully disobeyed the conditions of bail, and therefore, the bail is required to be cancelled on that ground. (Paras 14 , 17)

Case Referred:

1. Bhagirathsinh Jadeja v. State of Gujarat Air 1984 SC 372 (Para 21)

Spl. Cr. Application No.1262/88

Mr. B. B. Naik, Advocate for applicants/petitioners

Mr. K. S. Nanavati for Mr. M. B. Faruqi, Advocates for respondent No.1

Mr. K. T. Dave, Addl. PP for Respondent No.2-State

Misc. Cr. Application No.25/89

Mr. B. B. Naik, Advocate for petitioners

Mr. K. S. Nanavati for respondent No. 1

Mr. J. U. Mehta, Addl. PP for respondent No.2-State

R. A. MEHTA. J.:-

1. Both these applications are filed by the Customs authorities or cancellation of bail and are supported by the State through its learned counsels, Mr. J. U. Mehta and Mr. K.T. Dave, Addl. PPs. Special Criminal Application No.1262/ 86 is directed against the order of the learned J.M.F.C. releasing the first respondent on bail and the Misc. Criminal Application No.25/89 is for cancellation of the bail for breach of conditions on which it was granted earlier and continued. [*@page353*]

2. The respondent No. 1 is allowed to have been involved in a smuggling transaction wherein the gold worth Rs. 28 crores has been seized while it was being smuggled into India. From the statements it was gathered that the seized gold was to be delivered to first respondent Umar Haji Hasan and his brother Fakirmahomad. The seizure was effected in a dramatic film like chase. On 2-12-1988 the coast guard officers saw countrycraft named Al-Khalidi in the Indian waters between Porbandar and Jakhau and the same was chased. When the Coast Guard officers gave a signal to the said countrycraft to stop, the countrycraft did not comply with the signal and tried to run away and, therefore, for intercepting the said countrycraft, officers of the Coast Guard had to resort to helicopter and fire arms and ultimately the said countrycraft was caught hold of and the crew

members were arrested. Two of the crew members were injured in cross-firing and admitted in the hospital at Jamnagar and Porbandar and oilier members were taken to Bombay. The countrycraft was searched and it was found carrying 75,000 tolas of gold worth Rs. 28 crores. The two injured crew members, namely, Swali Ahmed and Mohmed Khalil Pirmahomad, were admitted in Porbandar hospital and were subsequently transferred to Jamnagar hospital. Swali Ahmed was the Tandel of the vessel. He in his statement revealed that the gold was to be delivered to one Kasam. The statement of Mohmad Khalil Sir-mohamed was also recorded under Section 108 of the Customs Act on 3-12-1988 and he gave details. of Kasam who was to lake delivery of the said gold and the relationship of Kasam with present respondent No. 1, Umar Haji Hasan and his brother Fakirmahomed Haji Hasan Subhania that Kasam is the nephew of the present respondent No. 1. Mahomed Khalil further suited that the said gold was to be delivered to Kasam and Kasam was to lake delivery of the said gold on behalf of respondent No. 1 and his brother (the brother was arrested in Bombay and proceedings for bail and cancellation of bail in Bombay High Court will be referred hereinafter). Subsequently, the statement of Swali Ahmed (Tandel) was also recorded under the Customs Act and he has also stated that the gold was to be delivered to Kasam who was to receive on behalf of respondent No. 1 and his brother. On this information the respondent No. 1 was arrested and produced before the J.M.F.C., Porbandar (his brother was arrested in Bombay). The respondent No. 1 submitted an application for releasing him on bail and the same was contested by the Superintendent of Customs by filing an affidavit.

3. The learned JMFC by his order, dated 14-12-1988 released respondent No. 1 on bail on Rs. 20,000/- cash and surety for Rs.2,00,000/ and personal bond of Rs.1,80,000/- on the following conditions:-

- (i) He shall record his presence at Customs Office at Porbandar on 1st and 15th of every month;
- (ii) He shall not leave India till disposal of the case;
- (iii) He shall not tamper with any witness for complainant;
- (iv) He shall not involve in any offence of this crime;
- (v) He shall remain present for interrogation in respect of his offence whenever asked by the Customs authorities.

4. Being aggrieved by this order, the Customs have preferred Special Criminal Application No. 1 262/88 for selling aside the order granting bail. On 21-12-1988 while admitting the petition the High Court passed the following order:

"Rule to be made returnable on 28-12-1988. Mr. M.D. Pandya, P.P. waives service of rule on behalf of respondent No. 2. Direct service permitted for respondent No. 1. [@page354]

Ad-interim relief to the effect that respondent No. 1 instead of making his presence as per the order, dated 14-12-88 passed by the learned Judicial Magistrate, First Class, Porbander in Misc. Cri. Appln. No. 712/1988, is ordered to mark his presence everyday at the place mentioned in the said order. It is clarified that the rest of the orders passed by the aforesaid court regarding releasing respondent No. 1 on bail remains intact."

5. Thus, it was directed that respondent-accused should mark his presence everyday instead of every fortnight.

6. Even though the accused was subjected to condition that he shall be available for interrogation whenever required by the Customs authorities the accused made himself scarce and was not available for service of the order of the High Court directing him to remain present everyday and his whereabouts were said to be not known even to his family members. The photocopy of the said order was sent to him by registered post by the customs authorities.

7. Harun Haji Hasan Sumbania, another brother of the respondent has filed an affidavit, dated 29-12-1988 on 30-12-1988 stating that he was given to understand that the High Court had passed an interim order partly staying the order granting bail to the opponent and that he was filing that affidavit to put certain documents on record. He placed on record a medical certificate dated 27-12-88 issued by Dr. S. D. Raj, M.B.B.S., Bombay certifying that Umar Haji Hasan was under his treatment from 22-12-88 for foot injury and he was advised rest upto 16-1-1989. The High Court had passed order on 21-12-1988 and next day he came to be under treatment of Dr. S. D. Raj at Bombay.

8. The affidavit further states that another brother, Fakir Mohmed Haji Hasan Sumbania was arrested by the DIR, Bombay, and was released on bail on the Bombay High Court. That order, dated 26-12-1988 of the Bombay High Court reads as follows:

"The petitioner shall be released on bail in the sum of Rs.2 lacs with one surety in the like amount. Liberty to deposit cash in lieu of surety bond is refused. Application for stay rejected. Applicant shall attend the office of DRI at Colaba from 11 a.m. to 1 p.m. *everyday* for one week. He shall not leave India without permission of the court."

9. The affidavit further contests the prayer for cancellation of bail on merits and in para 7.1 it is stated that "in any case, the condition imposed that the opponent should report daily at Porbandar should be waived. It was pointed out that there is a distance of about 150 kms between Jam Khambharia and Porbandar and if the opponent has to report daily at Porbandar, it would cause considerable inconvenience and hardship to him. It was further pointed out that the opponent was under treatment at Bombay, and he will have to be at Bombay for the purpose of treatment till 16th January 1989 and thereafter when the opponent returns to Jam Khambharia, the daily going to Porbandar for reporting would create an impossible situation". On the date on which this affidavit was filed the matter was heard before Mr. Justice A. S. Qureshi and the following order was passed:

"The matter is S.O. to 16-1-1989 at the request of the parties. Mr. K.S. Nanavati, *learned advocate, appearing for respondent No. 1 has submitted that the condition imposed while granting the interim relief is required to be modified to the extent that the said respondent may be directed to present himself before the Customs authorities at Jam Khambharia instead of Porbandar.* Mr. B. B. Naik, the learned Addl. PP has no objection. Hence, the earlier order is modified to the extent that the respondent No. 1 will present himself daily before the Customs authorities at Jam [@page355] Khambharia instead of Porbandar with effect from 3-1-1989."

10. Thus at the instance of respondent No. 1-accused the condition of daily reporting at Porbandar was changed to daily reporting to Jam Khambharia .and the excuse for remaining in Bombay for treatment was clearly given up and it was also directed that the respondent No. 1-accused will present himself daily and report to the Customs authorities at Jam Khambharia with effect from 3-1-1989.

11. On 2-1-1989, the time to remain present before the Customs authorities at Jam Khambharia was extended upto 4-1-1989. On 4-1-1989 the learned counsel for the respondent No. 1-accused filed a note placing two medical certificates on record, dated 3-1-1989. In one medical certificate it is stated that the accused-respondent No. 1 was suffering from Angina Pectoris (Ishaemic heart disease) and was advised to take complete rest in bed for 10 days; and in another certificate of the same date from the hospital states that the respondent No. 1-accused was suffering from knee joint trauma (he is unable to walk) and was advised to take complete bed rest for 15 days. In first certificate he was advised not to travel for 10 days and was advised to undergo treadmill test after 10 days. None of these two certificates show that he was hospitalised and none of these certificates give any address of the respondent No. 1-accused. Apparently, no order was sought from the court for changing or extending the time for reporting to the Customs officers at Jam Khambharia. *It is admitted position that till 16-1-1989 the respondent No.-1 accused did not report to the Customs officers as directed by the court in the condition of granting and continuing bail and did not comply with the requirements of remaining present as and when required by the Customs officers.*

In the affidavit, dated 16-1-1989 filed by the son of respondent No. 1-accused he has placed further certificate on record. Certificate, dated 10-1-1989 of Prince Aly Khan Hospital shows that he was admitted in that hospital from 7-10/1/89 and his case was of chest pain, angina pectoris *under evaluation* and was being referred to Bombay hospital. There is nothing to show that he had reported to Bombay hospital and underwent tests prescribed for him in the earlier certificate. It is further stated in the affidavit that the condition of respondent No. 1 -accused continued to be as before and therefore he was under treatment of doctors at Bombay and today, i.e. on 16-1-1989 in the morning at 8 o'clock he has remained present himself before the Customs authorities at Jam Khambharia. In another affidavit, dated 4-2-89 his son, i.e. son of respondent No. 1 -accused, reiterated that the respondent No. 1-accused was not keeping good health and was undergoing medical treatment in the hospitals at Bombay; he was undergoing medical treatment for the ailment from which he was suffering, i.e. heart problem, in the hospitals at Bombay and that he was advised not to travel and

to lake complete bed rest on the basis of the medical certificates produced before this Court. It is further stated that the respondent No. 1-herein had on being released from the hospital straightaway presented himself before the customs authorities at Jam Khambhalia on 16-1-1989 in compliance with the order of this court.

12. This story of illness and medical treatment has turned out to be a mere excuse for keeping away from the compliance of conditions of the bail as is evident from the fact that on 10-1-89 he went to Calcutta and moved an application in Calcutta High Court for interim order against his apprehended detention under COFEPOSA. This fact is an undisputed fact and is also admitted in para 1.2 of the affidavit of the son of the respondent No. 1-accused.

13. The detention order was passed by the Govt. of India on 9-1-89 at Delhi. The accused [*@page356*] was in Bombay. The smuggling incident had taken place near Porbandar in Gujarat. He was released on bail at Porbandar and is a resident of Jam Khambhalia and President of Jam Khambhalia Nagar Panchayat. He had attained bail and secured liberty in Gujarat. However, he went to Calcutta and obtained interim orders against his apprehended detention under COFEPOSA.

14. Similar is the story of his brother who was also required to report daily to the DRI authorities at Bombay. He also made himself scarce and did not comply with the conditions of reporting to the DRI authorities and went underground after his release on bail, obtained interim orders against his detention from Calcutta. He had also a story to tell for not reporting daily to the DRI at Bombay which is seen from the judgment of Bombay High Court cancelling the bail. He was ordered to be released on bail on 26-12-1988. According to that accused, he received a telephonic call on the same day, i.e. 26-12-88 to the effect that his mother was seriously ill and therefore he was required to go to Porbandar and therefore he moved an application before the Bombay High Court for modification and the learned Judge directed that while that accused was going to his native place, he shall report to Asst. Collector of Customs at Porbandar during this time as required under the order dated 26-12-1988.

It was further directed that the accused shall also report at Bombay after he left Porbandar and that he should again start reporting to DRI, Colaba from 10-1-89. That accused did not attend the office of DRI on 28-12-88 and from that day onwards did not report any where and he did not report at the office of the Assistant Collector, Customs at Porbandar. According to the accused, he went to Porbandar on 29-12-88 and reached Jam Khambhalia on that day at about 10 p.m. and he learnt there that his mother was seriously ill and she had been taken to Jamnagar. On the next day he went to Jamnagar to see his ailing mother in the Nursing Home of Dr. K. S. Shah. According to him on seeing the condition of his mother he was greatly upset and his mother expressed a desire and asked him to pay a visit to Dargah of St. Chisti at Ajmer and he was further asked by his mother to remain in Ajmer for seven days and offer prayers 40 times and accordingly he went to Ajmer and remained there till 7-1-89 and on that day he left Ajmer and proceeded to Calcutta where he reached on 8-1-89 and came to Bombay on 10-1-89. In Calcutta he moved an application in Calcutta High Court and obtained an order restraining the Government of India from detaining him under COFEPOSA and after obtaining this order came to Bombay and reported to DRI.

15. In that case also it was contended that the accused had bona fide intention to comply with the order of conditions of bail but because of the illness of his mother and her desire to offer prayers at Ajmer he could not comply with the conditions. As regards going to Calcutta and obtaining the stay order it was contended that he had secured the order as provided under law and his bona fides cannot be questioned on that behalf. The Bombay High Court did not accept his story and cancelled the bail. Para Nos.13, 14 and 18 of the order of Mr. Justice H. Suresh, dated 18-1-89 reads follows:

"13. Thus it is clear that from 29-12-88 till he came back to Bombay he was not available for investigation, apart from the fact that he deliberately flouted the order of this court. He made himself scarce. This is nothing but absconding entitling the applicants to make the present application to have his bail cancelled".

"14. The fact that he came back from Calcutta with an order from the Calcium High Court in respect of an order passed at Delhi, and in respect of an incident that look place at Porbandar with regard to which all the proceedings are in Bombay, speaks volumes for his conduct. While propriety demands that I [*@page357*]

should say nothing as far as the Calcutta High Court is concerned. I will have no hesitation in lamenting upon the active connivance on the part of the legal fraternity that has advised and assisted him. But that apart, I am inclined to think that this is nothing but *gross abuse of freedom that he got under the bail order*".

"16. Mr. Vakil, on behalf of his client tendered an apology. I do not accept that apology. Apology is only a rare to avoid the law. I have no sympathy for a person who has scant respect for the order of this Court. He deliberately flouted the order of this court. He misused the freedom that was given to him by the order of this Court. He subverted the judicial process when he went to Calcutta and brought an order behind the back of the officers. Having come to this court and having obtained freedom on bail from this court, in all fairness he ought to have moved this court, after due notice to the other side. The fact that he did *not do so shows his basic distrust of this court.*"

16. I wholeheartedly agree with these observations. I would only add that it is not the distrust of the court, it is fear of the court. When a criminal or a smuggler is afraid of the court, that court can take it as a compliment that the persons who must be afraid of the court, are really afraid of the court. It is not always that such persons came to the court for justice, real and substantial, out they want to use the court and the judicial process to meet their own ends and purposes. Naturally, they are advised to select the forum which serves their ends and purposes. Howsoever, one may disprove of such advice and tactics, it is likely to continue till the proper court does something about it.

17. Similar is the make-believe story of this present respondent-accused. Both the brothers have parallel make-believe stories for identical purposes. Strangely the story about mother's illness does not find any place in the story of the present respondent. Both the brothers are in Bombay, then one brother receives a telephone call about serious illness of mother, but the other brother (the present respondent) does not get that information! Even though he is aware of the High Court's order that he has to report daily at Porbandar and at his instance the place of reporting is changed from Porbandar to Jam Khambhalia he does not care to report his whereabouts, does not care to seek any extension/modification and on false excuses remains away from law and law-enforcing officers and deliberately flouts the conditions of bail. The story of his illness seems to be a bogey in view of the fact that he did not go to Bombay hospital as directed. He has not produced any medical evidence in that respect and he did not have any history or past record and does not show that he has serious heart ailment. Once the story of illness and excuses falls to ground, it is clear that he has deliberately and willfully disobeyed the conditions of bail, and therefore, the bail is required to be cancelled on that ground, and therefore, the Misc. Criminal Application No. 25/89 is required to be allowed.

18. The Special Criminal Application No. 1262/88 has also strong merit in it. The learned trial Magistrate has observed that there is no *prima facie* case against the accused and that he is the President of Jam Khambhalia Municipality and that there is no basis for apprehension that he will not be available for trial.

19. The learned counsel for the Customs authorities has submitted that the present accused is not only involved in smuggling activities but his present connection in the incident is also shown. It is submitted that ten years ago the respondent was involved in an incident of huge quantity of snake skins and he was penalised for the same. On behalf of the accused it was submitted to the learned Magistrate that an appeal against the order of penalty was pending and that thereafter there is no incident in 10 years and that he is democratically elected [*@page358*] public worker and thus he has completely reformed himself and in such circumstances if he was not released on bail his mind was likely to be perverted and that he should be given additional opportunity in accordance with reformatory theory. The learned Magistrate has completely agreed with such arguments.

20. The reasons of the learned Magistrate about lack of *prima facie* case as well as consideration of reformatory theory and the respondent being a public figure, are thoroughly erroneous and perverse. In transactions of such a magnitude it is very difficult to get direct physical involvement with prime persons. It is true that the respondent was not found with the gold, but the statement of Mahomed Khalil Pirmohmed is of significance in view of the fact that he was not an ordinary crew member, he was sent by the owners of the vessel in Dubai and he has stated that the gold was to be delivered to Kasam, nephew of respondent No. 1 for delivering to respondent No. 1 by Kasam for further disposal. This statement has not been believed by the learned Magistrate On the ground that the statement does not show that the owner of the launch had talked with the

present respondent-accused and that there was nothing showing that the owner had given such instructions and therefore it was not possible to infer that the present respondent had any knowledge about the smuggling of gold or he has any connection with the conspiracy. Thus the learned Magistrate has not given any effect to the statements that these two brothers were to be recipients of this smuggled gold. Therefore, the finding of the learned Magistrate that there is no *prima facie*, case is utterly baseless and erroneous. At this stage for consideration of bail, the court is not required to give any finding that there is a certainty of conviction but on the material on record it can certainly be said that there is a *prima facie* case against the respondent-accused, and there is sufficient material to try the respondent-accused for the offence. The learned Magistrate has also mentioned that Kasam was not yet arrested and his statement was not recorded, but the learned Magistrate has not appreciated that accused Kasam has been absconding and is not traceable and not available. The learned Magistrate has also not appreciated the fact that the incident occurred on 2-12-88 and on 14-12-88 he has passed order for release of the accused on bail when the investigation was at a very crucial stage and at this stage the release of persons who were alleged to be accused recipients of huge quantity of gold will be detrimental to the course of investigation. While seeking release on bail all and any conditions and cooperation with investigation are promised so as to secure liberty, and immediately, thereafter all such promises and conditions become nugatory as seen from the present case.

21. The learned counsel for the first respondent submitted that cancellation of bail already granted is quite different from refusing bail in the first instance. Once the bail is granted in exercise of judicial discretion it cannot be cancelled because of change of forum. It is submitted that valid and cogent reasons are required for cancellation of bail already granted. Reliance is placed on the observations of Supreme Court in the case of *Bharatsinh Jadeja v. State of Gujarat*, 1984 SC 372, it is true that valid and cogent reasons are required for cancellation of bail, but in the present case such reasons are there. The learned Magistrate has not appreciated the *prima facie* involvement of the respondent and that there is huge quantity of gold worth Rs.28 crores involved in the smuggling transaction, persons involved are having all the resources and means to defeat the course of investigation and in the given case persons who have been released on bail on conditions to cooperate with the investigation and report to the investigators have willfully and deliberately failed to comply with these conditions and that has been done with a view to hamper the investigation as well as abusing the process of court and liberty granted by the court. [*@page359*]

22. The learned counsel for the respondent No. 1 submitted that there is no damage done to the investigation. Same argument was advanced in the Bombay High Court and it was observed that it is a very serious economic offence the types of which are on the increase and which cannot be approached in a casual manner; it is clear that the first respondent was not available for investigation purpose for a long time. When the court granted bail and imposed a term that he should be available for interrogation whenever required and shall also report daily which was not an empty formality but was essentially or the purpose of enabling the authorities to further investigate and for which the presence of the respondent was necessary. It is a fact that the respondent disappeared soon after his release on bail without giving any address or whereabouts and thereafter completely evaded the authorities on false excuses without any bona fide justifications. It is sufficient to hold that he has clearly obstructed the investigation. The respondent's nephew who is said to be involved has not been traced so far. Bombay High Court observed: "In offences of such type with money, muscle and middlemen wielding considerable influence, investigation is not easy". I entirely agree with the observation made by the Bombay High Court in the case of the brother of first respondent. Non-availability of this person for investigation and his going underground would clearly show that he was engaged in obstructing the investigation and the result is a serious setback of the investigation.

23. Since the learned Magistrate has illegally and without valid reasons granted the bail his order is required to be set aside. The bail is also required to be cancelled because of violation of conditions on which bail was granted and continued. On both these grounds the bail is required to be cancelled, hence, the said Special Criminal Application No.1262/88 is also required to be allowed by quashing and setting aside the order, dated 14-12-88 passed by the learned Magistrate, Porbandar.

24. In the result, both these applications are allowed and rule is made absolute and the bail granted to the respondent No. 1 is cancelled forthwith and the respondent No. 1 is ordered to be taken into custody.

25. The learned counsel for respondent No. 1 prays that the order of cancellation of bail be stayed for three weeks to enable him to approach Supreme Court. Said request is rejected. Similar request was made by the respondent-accused's brother in the Bombay High Court and that was also rejected.

26. The authorities are at liberty to take the respondent No. 1 in custody and produce him before appropriate jail authorities for judicial custody. At the request of learned counsel for respondent No. 1, it is recorded that the respondent No. 1 has remained present at the time of hearing of this petition since last 3-4 days and today also he is here.

(RPV)

Applications allowed.