

(2024) 01 GUJ CK 0016

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 16292 Of 2023 (For Regular Bail - After Chargesheet)

Aezazmiya Rafikmiya @ Rafuamin Miya Malek

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 02-01-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(C), 20, 29

Citation : (2024) 01 GUJ CK 0016

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Z L Khan, JK Shah

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the FIR being C.R. No.11204025230199/2023 registered with the Kheda Town Police Station, Kheda for the offence punishable under Sections 8(C), 20 and 29 of the NDPS Act.

2. Learned advocate for the applicant submitted that now the investigation is completed and after submission of the chargesheet, the present application is preferred and the applicant is in jail since 27.04.2023. Learned advocate submitted that the case of the prosecution is that the co-accused have purchased the contraband articles from the present applicant – accused and on the strength of the statement of the co-accused, the present applicant is arraigned as accused. Learned advocate submitted that the co-accused, who have been caught red handed on the spot, have already been enlarged on bail by this Court. It is, therefore, urged that considering the nature of the offence and on the ground of parity, the applicant may be enlarged on regular bail by imposing suitable conditions.

3. Learned APP for the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. It is submitted that the role of the present applicant is clearly spelt out from the papers of the chargesheet and, hence, the present application may not be entertained.

4. Learned advocates appearing on behalf of the respective parties do not press for further reasoned order.

5. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers of the investigation and considered the allegations levelled against the applicant and the role played by the applicant. It is found out from the record that the present application is preferred after submission of the chargesheet and now the investigation is completed and the applicant is in jail since 27.04.2023. Other co-accused, who were caught red-handed on the spot by the members of the raiding party, have already been granted bail. I have also considered the role attributed to the present applicant – accused. Therefore considering the above factual aspects, the present application deserves to be allowed.

6. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. Central Bureau of Investigation, reported in [2012] 1 SCC 40 as well as in case of Satender Kumar Antil v. Central Bureau of Investigation & Anr. reported in (2022) 10 SCC 51.

7. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the FIR, without discussing the evidence in detail, prima facie, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

8. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.11204025230199/2023 registered with the Kheda Town Police Station, Kheda on executing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall;

[a] not take undue advantage of liberty or misuse liberty;

[b] not act in a manner injurious to the interest of the prosecution;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave the State of Gujarat without prior permission of the Sessions Judge concerned;

[e] mark presence before the concerned Police

Station on alternate Monday of every

English calendar month for a period of six months between 11:00 a.m. and 2:00 p.m.;

[f] furnish the present address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

9. The authorities will release the applicant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the concerned Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

10. At the trial, the trial Court shall not be influenced by the observations of preliminary nature qua the evidence at this stage made by this Court while enlarging the applicant on bail.

11. Rule is made absolute to the aforesaid extent. Direct service is permitted.