

(2023) 05 GUJ CK 0042

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 7604 Of 2023

Akbarnath Natvarnath Madari

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 09-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 406, 420

Citation : (2023) 05 GUJ CK 0042

Hon'ble Judges : M. R. Mengdey, J

Bench : Single Bench

Advocate : Khushi P Jadav, Samir M Mansuripinjara, Utkarsh Sharma

Final Decision : Allowed

Judgement

M. R. Mengdey, J

1. The Applicant – Akbarnath Natvarnath Madari has filed this Application under Section 439 of the Code of Criminal Procedure for enlarging him on Regular Bail in connection with FIR being I-C.R. No. 11192050230146/2023 registered with Sanand Police Station, Ahmedabad for the offences punishable under Sections 406, 420 and 114 of the Indian Penal Code.

2. Heard learned Advocate Ms. Khushi P. Jadav for the Applicant and learned APP Mr. Utkarsh Sharma for the Respondent – State.

Submission of the Parties:

3. Learned Advocate for the Applicant / Accused has submitted that the main accused namely Narsinhnath @ Nareshnath has been ordered to be enlarged on Regular Bail by the Trial Court. She submitted that the role attributed to the present Applicant is similar to the other co-accused who is ordered to be enlarged on bail. The muddamal has also been recovered from the other co-accused.

3.1 Learned Advocate for the Applicant has further submitted that the Applicant has good reputation in the society and no useful purpose would be served by keeping the applicant in jail for indefinite period. It is further contended that the applicant is ready and willing to abide by all the conditions that may be imposed by this Court if released on bail.

4. Per contra, learned APP has vehemently opposed the present application for grant of regular bail. Looking to the nature and gravity of offence, it is requested that, this Court may not exercise the discretion in favour of the applicant. He further submitted that if the Hon'ble Court is inclined to grant bail then in such case strict conditions may be imposed to secure the presence of the Applicant Accused.

Merits of the Case:

5. This court has considered the following aspects:

(a) As per catena of decisions of Hon'ble Supreme Court, there are mainly 3 factors which are required to be considered by this court i.e. prima facie case, availability of Applicant accused at the time of trial and tampering and hampering with the witnesses by the accused.

(b) That the learned Advocate for the Applicant has submitted that the Applicant Accused is not likely to flee away.

(c) That the Applicant is a lady Accused and is in custody since 10.4.2023.

(d) The law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. C.B.I. Reported in (2012) 1 SCC 40.

6. Having heard the learned Advocates for the parties and perusing the record produced in this case as well as taking into consideration the facts of the case, nature of allegations, gravity of accusation, availability of the Applicant Accused at the time of Trial etc. and the role attributed to the present Applicant accused, the present Application deserves to be allowed and accordingly stands allowed. This Court has also gone through the FIR and police papers and also the earlier order passed by the learned Sessions Court where the learned Sessions Judge has disallowed the bail Application at initial stage. The Applicant Accused is ordered to be released on bail in connection with the aforesaid FIR on executing a personal bond of Rs.10,000/- with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that he shall:

(a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer or tamper with the evidence.

(b) maintain law and order and not to indulge in any criminal activities.

(c) furnish the documentary proof of complete, correct and present address of her residence to the Investigating Officer and to the Trial Court at the time of

executing the bond and shall not change his residence without prior permission of the trial Court.

(d) provide his contact numbers as well as the contact numbers of the sureties before the Trial Court. In case of change in such numbers inform in writing immediately to the trial Court.

(e) file an affidavit stating his immovable properties whether self acquired or ancestral with description, location and present value of such properties before the Trial Court, if any.

(f) not leave India without prior permission of the Trial Court

(g) surrender passport, if any, to the Trial Court within a week. If she does not possess passport, she shall file an Affidavit to that effect.

7. Bail bond to be executed before the Trial Court having jurisdiction to try the case. It would be open for the Trial Court concerned to give time to furnish the solvency certificate if prayed for.

8. If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities will release the Applicant forthwith only if he is not required in connection with any other offence for the time being.

9. At the trial, the concerned trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

10. Rule is made absolute. Direct service permitted today.