

(2021) 02 GUJ CK 0042

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 877 Of 2021

Anil Kaluram Prajapati

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 09-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(c), 22(c), 29, 37

Citation : (2021) 02 GUJ CK 0042

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Salim M Saiyed, Maithili Mehta

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This application is filed by the applicant â?" accused under section 439 of the Code of Criminal Procedure, 1973 ('the Code' for short) for enlarging

him on regular bail in connection with FIR being Part-B C.R. No. 11210056201989 of 2020, registered with Dindoli Police Station, District Surat City

for the offence punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'NDPS

Act').

2. Heard, learned advocate Mr. Salim M. Saiyed for the applicant and learned APP Ms. Maithili Mehta for the respondent - State through video

conference.

2.1 Rule. Learned APP waives service for the respondent â?" State.

Submission of the Parties:

3. The learned advocate for the applicant has submitted that the applicant is an innocent person and falsely implicated in the crime in question. It is

submitted that the applicant is arraigned only on the basis of the statement of the co-accused and as such, the applicant has no past antecedents. He

submitted that the contraband goods was seized from the possession of the co-accused and not from the present applicant. Further, it is submitted that

it is a case of intermediate quantity and it does not fall within the commercial quantity. It is submitted that there is no direct involvement of the

applicant - accused in the present case so far as allegation is concerned.

3.1 The learned advocate for the applicant submitted that, this Court has, earlier granted liberty to file a fresh application after the charge-sheet is

filed. He submitted that now, the charge-sheet in the case is filed and hence, there is no possibility of tampering and hampering with the evidence. It is

submitted that the applicant has family roots in the society and therefore, he is not likely to flee away from justice. That, the applicant will abide by

whatever conditions imposed by this Court. Accordingly, it is urged that discretion may kindly be exercised and requested to grant the bail to the

present applicant - accused.

4. Per contra, the learned APP has vehemently argued that the offence is under the NDPS Act and therefore discretion may not be exercised and

ultimately, the learned APP has opposed grant of bail looking to the nature and gravity of offence, involvement of the applicant - accused. It is

submitted that the charge-sheet in the case is filed and from the charge-sheet papers, prima facie case is made out against the present applicant. The

learned APP has further submitted that if this 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) that there are no antecedents against the applicant - accused;

(b) that in the present case it is an admitted fact that the applicant - accused has come with this application after the charged sheet is filed;

(c) further as per catena of decisions of Honâ??ble Supreme Court, there are

mainly three factors which are required to be considered by this court

i.e. prima facie case, availability of accused at the time of trial and tampering and hampering with the evidence (witnesses) by the accused;

(d) alleged quantity is not commercial but intermediate hence no rigour of Section 37 of NDPS Act is applicable;

(e) that the learned advocate for the applicant has submitted that the applicant - accused is not likely to flee away;

(f) that the Applicant Accused is in custody since 09.09.2020;

(g) 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 wherein it is held that jail is a

rule and bail is an exception.

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. Applicant - accused â?" ANIL KALURAM

PRAJAPATI is ordered to be released on bail in connection with the aforesaid FIR on executing a personal bond of Rs.25,000/- (Rupees Twenty Five

Thousand only) 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 his 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) mark presence before the concerned police station on every 1st day of English calendar month between 12:00 p.m. and 2:00 p.m. for a period of

one year or till the trial is concluded, whichever is earlier;

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

(i) shall maintain all the rules and regulations framed by the Municipality / Corporation regarding contemporary status of corona virus/Covid-19, State

Government or by any competent authority, including social distancing.

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. Rule is made absolute. The Registry is directed to communicate this order by fax / by e-mail to the concerned Court / authority.