

(2020) 11 GUJ CK 0012
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 16264 Of 2020

Arvinbhai Chhanabhai Nayka

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Wild Life (Protection) Act, 1972 — Section 2(11), 2(16), 9, 39,50, 51, 52

Citation : (2020) 11 GUJ CK 0012

Hon'ble Judges : Vipul M. Pancholi, J

Bench : Single Bench

Advocate : Zubin F Bharda, Mitesh Amin

Final Decision : Allowed

Judgement

Vipul M. Pancholi, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being C.R.No.1 of 2020-21 registered with Bit-Maroli/Round-Maroli/Range Supa, Navsari for offence under Sections 2(11), 2(16), 9, 39, 50,51 and 52 of the Wild Life (Protection) Act, 1972.

2. Learned Advocate appearing on behalf of the applicant submits that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

3. It is submitted by learned advocate Mr. Bharda appearing for the applicant that applicant is not named in the FIR and he has been implicated on the basis of the statement of the co-accused - Jagdish Narayanrav Vavre.

4. It is further submitted that co-accused - Pravin Devidasrav Gulhane against whom almost similar type of allegations are levelled, has been enlarged on bail by the Coordinate Bench of this Court vide order dated 26.10.2020 passed in

Criminal Misc. Application No.15877 of 2020. Copy of the said order is placed on record.

5. At this stage, learned advocate Mr. Bharda has referred the role attributed to the present applicant and the co-accused - Pravin Devidasrav, who has been enlarged on bail, in the affidavit filed by the IO, copy of which is placed on record at page 31 and learned advocate has more particularly referred page 35 of the said affidavit.

6. Learned Public Prosecutor Mr. Mitesh Amin has vehemently opposed this application and contended that the serious offence is committed by the applicant and therefore when the charge-sheet is not filed against the applicant, this Court may not consider the case of the applicant.

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

8. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

9. This Court has considered following aspects,

(a) Applicant is in jail since 25.09.2020;

(b) remand period is over and investigation is almost concluded qua applicant;

(c) I have considered the submissions canvassed by learned advocate for the applicant. I have also perused the order dated 26.10.2020 passed by the Coordinate Bench of this Court in the case of co-accused Pravin Devidasrav. I have also considered the affidavit filed by the IO before the concerned Sessions Court and I am of the view that the role attributed to the present applicant is almost similar to that of the co-accused Pravin Devidasrav who has been enlarged on bail by the Coordinate Bench of this Court.

Thus, only on the ground of parity, I am inclined to consider the case of the applicant.

10. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra Vs. Central Bureau of Investigation, reported in [2012] 1 SCC 40.

11. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being C.R.No.1 of 2020-21 registered with Bit-Maroli / Round-Maroli /Range Supa, Navsari on executing a personal bond of Rs.10,000/- (Rupees Ten 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 India without prior permission of the concerned trial court;
 - [e] mark presence before the concerned Police Station between 1st to 10th day 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 the concerned trial court;
12. The authorities shall adhere to its own circular regarding Covid-19 and thereafter 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 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.
13. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.
14. Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/Authority through Fax or Email.