

(2020) 02 GUJ CK 0019

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 277 Of 2020

Asgar @ Akadi Mahammadbhai Kakkal

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 120B, 143, 147, 148, 149, 302
Gujarat Police Act, 1951 — Section 135

Citation : (2020) 02 GUJ CK 0019

Hon'ble Judges : Vipul M. Pancholi, J

Bench : Single Bench

Advocate : Hriday Buch, Param R Buch, LB Dabhi

Final Decision : Allowed

Judgement

Vipul M. Pancholi, J

1. The present application, which is a successive one, is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection

with FIR being C.R. No.IA123 of 2018 registered with Anjar Police Station for offence under Sections 302, 143, 147, 148, 149 and 120B of the Indian

Penal Code read with Section 135 of the Gujarat Police Act, pursuant to the liberty granted by this Court vide order dated 09.08.2019. This Court has

passed the following order:

â??Learned advocate for the applicant does not press this application with a request to direct the trial to expedite the trial.

The application stands disposed of, as not pressed. Looking to the facts and circumstances of the present case, the trial Court is directed to expedite

the trial. Liberty is reserved to the applicant to file a fresh application after

depositions of the first informant Ranjitaben and eye witness Bharatbhai are recorded. Rule is discharged.â??

2. Learned Advocate appearing on behalf of the applicant submits that depositions of the first informant Ranjitaben and eye witness Bharatbhai are recorded. Both the witnesses have not supported the case of the prosecution and, therefore, the applicant has preferred this successive bail application.

3. Learned APP appearing on behalf of the respondent? State has opposed grant of regular bail looking to the nature and gravity of the offence.

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

5. 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.

6. This Court has considered following aspects,

(a) it is submitted by the learned advocate for the applicant that depositions of the first informant Ranjitaben and eye witness Bharatbhai are recorded and they have not supported the case of the prosecution and turned hostile;

(b) it is further submitted that twenty five witnesses are examined. However, there are other twenty three witnesses yet to be examined by the prosecution;

(c) it is further submitted that two other co accused, who are named in the FIR have been enlarged on bail by the concerned Sessions Court. Copies of the said orders are produced on record; and

(d) in view of the above submissions canvassed by the learned advocate for the applicant and looking to the facts and circumstances of the present case, I am inclined to consider the case of the applicant.

7. 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.

8. Hence, the present application is allowed. The applicant is ordered to be

released on regular bail in connection with FIR being C.R. No.IA123 of

2018 registered with Anjar Police Station, on executing a personal bond of Rs.10,000/â (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;

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 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 prima facie observations made by this Court in the present order.

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