

(2023) 07 GUJ CK 0009
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 11240 Of 2023

Ashokbhai Jayantibhai Matariya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 03-07-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 120B, 409, 467, 468, 471
Prevention Of Corruption Act, 1988 — Section 13(1)(A), 13(2)

Citation : (2023) 07 GUJ CK 0009

Hon'ble Judges : Nirzar S. Desai, J

Bench : Single Bench

Advocate : Yash J Patel, Utkarsh Sharma

Final Decision : Allowed

Judgement

Nirzar S. Desai, 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 CR NO. I of 2023 registered with ACB Police Station Morbi, District: Morbi, for offences under Sections 409, 467, 468, 471, 120B and 34 of Indian Penal Code and under Section 13(1)(A) and 13(2) of the Prevention of Corruption Act, 2018.

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

3. Learned Additional Public Prosecutor appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.

4. Learned Advocate 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 the following aspects:-

(a) the applicant is in jail since 23.05.2023;

(b) though charge-sheet is not filed, investigation is substantially over;

(c) though an application was made making allegation about irregularities committed by the present applicant by one Mr. Samir Amrutlal Patel on 01.04.2015 and upon that application, after eight years FIR was registered on 26.01.2023;

(d) there is no justification coming forward for such inordinate delay of eight years after the alleged irregularities were pointed out and though the Court repeatedly sought the justification from Investigating Officer who is present before this Court through learned APP, no answer has given which can justify the aforesaid delay;

(e) co-accused namely Mr. Arvindbhai Bhagwanjibhai Rathod is already enlarged on regular bail by this Court vide order dated 27.06.2023 in Criminal Miscellaneous Application No 10345 of 2023, hence on the ground of parity present applicant is required to be enlarged on regular bail;

(f) no past antecedent is attributed to the present applicant.

In the facts and circumstances of the present case, I am inclined to consider the case of the present 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 Vs. 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 CR NO. I of 2023 registered with ACB Police Station Morbi, District: Morbi, 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 during every week of

every English calendar month between 11:00 a.m. and 2:00 p.m. till trial is not over;

[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 shall adhere to its own Circular relating to COVID-

19 and, thereafter, 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 Sessions 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.