

(2023) 12 GUJ CK 0031

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - Before Chargesheet)
No. 21482 Of 2023

Ashraf Ali Faruk Nadirmiya Ansari

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 11-12-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 120B, 420
Information Technology Act, 2000 — Section 66(C), 66(D)

Citation : (2023) 12 GUJ CK 0031

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Minhaj M Shaikh, Jirga Jhaveri

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the FIR being C.R. No.11210062230043/2023 registered with the Cyber Crime Police Station for the offence punishable under Sections 420 and 120(B) of the Indian Penal Code and under Sections 66(C) and 66(D) of the IT Act.

2. Learned advocate for the applicant submitted that FIR has been lodged on 17.06.2023 against unknown persons and the present applicant has been arrested on 24.06.2023 on the ground of suspicion and now the investigation is completed and the present application is preferred after submission of the chargesheet. It is submitted that entire case of the prosecution based upon documentary evidence and the applicant is arraigned as accused in the aforesaid crime on the basis of the statement made by the co-accused. It is also submitted that in the present offence, co-accused have been enlarged on bail either by the concerned Sessions Court or by this Court. It is further submitted that the

offences are triable by the Court of Magistrate. It is, therefore urged that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

3. Learned APP for the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. It is submitted that role of the present applicant is clearly spelt-out in the papers of the chargesheet and he has received 20% of the amount out of total amount. It is further submitted that the role attributed to the present applicant is different than the co-accused, who have been granted bail and, hence, therefore, law of parity cannot be considered in case of the present applicant. It is, therefore, urged that the present application may not be entertained.

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

5. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers of the investigation and considered the allegations levelled against the applicant and the role played by the applicant. It is found out that the investigation is completed and the present application is preferred after submission of the chargesheet. The offences are triable by the Court of Magistrate and the case of the prosecution is based upon documentary evidence and the concerned IO has collected all the documents during the course of investigation as also the co-accused have already been enlarged on bail. I have also considered the role attributed to him at the time of commission of crime. Thus considering the above factual aspects, the present application deserves to be allowed.

6. 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 as well as in case of Satender Kumar Antil v. Central Bureau of Investigation & Anr. reported in (2022) 10 SCC 51.

7. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the FIR, without discussing the evidence in detail, prima facie, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

8. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.11210062230043/2023 registered with the Cyber Crime Police Station on executing a personal bond of Rs.15,000/- (Rupees Fifteen 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 State of Gujarat without prior permission of the Sessions Judge concerned;

[e] mark presence before the concerned Police Station on alternate Monday 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 and shall not change the residence without prior permission of this 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 concerned 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 observations of preliminary nature qua the evidence at this stage made by this Court while enlarging the applicant on bail.

11. The present application stands allowed accordingly. Direct service is permitted.