

**(2023) 07 GUJ CK 0008**  
**In the Gujarat High Court**

**Case No :** R/Criminal Misc.Application No. 9750 Of 2023

Ashwinbhai Kantilal Acharya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

**Date of Decision :** 03-07-2023

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 439  
Negotiable Instruments Act, 1881 — Section 138

**Citation :** (2023) 07 GUJ CK 0008

**Hon'ble Judges :** Nirzar S. Desai, J

**Bench :** Single Bench

**Advocate :** S M Kikani, Pm Lakhani, R P Lakhani, 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 Complaint No. being Criminal Case NO. 2477 of 2019 registered before the LD. JUDICIAL MAGISTRATE FIRST CLASS, OLPAD AT SURAT for offences under Section 138 of Negotiable Instrument Act.

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 Mr. P. M. Lakhani for respondent No 2 strongly opposed the application and submitted that for the period of 5 years applicant has remained absent, however, in view of the submission made by learned advocate Mr. Kikani

as the applicant has given assurance to remain present during Court proceedings, this Court is of the view that application preferred for bail by the applicant is required to be considered.

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

6. 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.

7. This Court has considered the following aspects:-

(a) it is alleged against the applicant that he did not remain present in a proceedings under Section 138 of the Negotiable Instruments Act, for which non bailable warrant was issued and pursuant to that present applicant is arrested and he is behind the bar since 16.04.2023 ;

(b) learned advocate Mr. S. M. Kikani upon instructions states that applicant has shown hi willingness to file undertaking within a period of two weeks after his release, stating that in future he shall not remain absent in Court proceedings for which he was arrested and in case of his inability to remain present he shall seek exemption for that day only by stating reason for that exemption and shall remain absent only in case of if Court grant exemption;

(c) in view of above applicant is required to be enlarged on bail.

In the facts and circumstances of the present case, I am inclined to consider the case of the present applicant.

8. 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.

9. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with Complaint No. being Criminal Case NO. 2477 of 2019 registered before the LD. JUDICIAL MAGISTRATE FIRST CLASS, OLPAD AT SURAT, 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 nearest Police Station of his residence 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;

10. 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.

11. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

12. Rule is made absolute to the aforesaid extent.