

(2022) 06 GUJ CK 0159
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 10764 Of 2022

Avesh @ Aveh Hanifbhai Shekh And Another

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 24-06-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 394, 504, 506(2)
Gujarat Police Act, 1951 — Section 135(1)

Citation : (2022) 06 GUJ CK 0159

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Pratik Y Jasani, Jirga Jhaveri

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This Application is filed by the Applicants – Accused under Section 439 of the Code of Criminal Procedure for enlarging the applicants on Regular Bail in connection with I-C.R. No.11202008220611 of 2022 registered with City 'A' Division Police Station, District : Jamnagar for the offences punishable under Sections 394, 504, 506(2) and 114 of the Indian Penal Code and Section 135 (1) of the Gujarat Police Act.

2. Heard learned Advocate Mr. Pratik Jasani for the Applicants and learned APP Ms. Jirga Jhaveri for the Respondent State.

3. Rule. Learned APP waives service of Rule for the Respondent State of Gujarat.

Submission of the Parties:

4. Learned Advocate for the Applicants / Accused has submitted that there are seven offences upon the first accused and three offences against accused No.2 and no other offences are registered against them and they are ready to abide

every conditions whatever conditions imposed by the Hon'ble Court. He has therefore prayed that discretion may kindly be exercised and grant bail to the Applicants Accused.

4. Per contra, learned APP has vehemently argued that since the offences are identical to the present one and therefore bail application is not required to be considered and if the Court so desires in that case strict conditions may kindly be imposed including marking presence at 15 days till conclusion of the trial.

Merits of the Case:

5. This court has considered the following aspects:

(a) That in the present case it is an admitted fact that the Applicants accused have come for this Application after the charged sheet is filed.

(b) Further as per catena of decisions of Hon'ble Supreme Court, there are mainly 3 factors which are required to be considered by this court i.e. prima facie case, availability of Applicants accused at the time of trial and tampering and hampering with the witnesses by the accused.

(c) That the learned Advocate for the Applicants has submitted that the Applicants Accused are not likely to flee away.

(d) That the Applicants Accused are in custody since 22.04.2022.

(e) The law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. C.B.I. Reported in (2012) 1 SCC 40, wherein it is held that bail is a rule and jail is an exception.

6. Having heard the learned Advocates for the parties and perusing the record produced in this case as well as taking into consideration the facts of the case, nature of allegations, gravity of accusation, availability of the Applicants Accused at the time of Trial etc. and the role attributed to the present Applicants accused, the present Application deserves to be allowed and accordingly stands allowed. The Applicants Accused – Avesh @ Aveh Nahifbhai Sheikh and Vakash Hasan @ Sau Hanifbhai Sheikh are ordered to be released on regular bail in connection with I-C.R. No.11202008220611 of 2022 registered with City 'A' Division Police Station, District : Jamnagar on executing a personal bond of Rs.25,000/- with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that they shall:

(a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer or tamper with the evidence.

(b) maintain law and order and not to indulge in any criminal activities.

(c) furnish the documentary proof of complete, correct and present address of his residence to the Investigating Officer and to the Trial Court at the time of executing the bond and shall not change their residence without prior permission

of the trial Court.

(d) provide his contact numbers as well as the contact numbers of the sureties before the Trial Court. In case of change in such numbers inform in writing immediately to the trial Court.

(e) file an affidavit stating his immovable properties whether self acquired or ancestral with description, location and present value of such properties before the Trial Court, if any.

(f) not leave India without prior permission of the Trial Court

(g) mark presence before the concerned police station on every 15 days of English calendar month between 12:00 Noon and 2:00 PM till the trial is concluded.

(h) surrender passport, if any, to the Trial Court within a week. If they do not possess passport, they shall file an Affidavit to that effect.

(I) If the Investigating Officer found the present accused in such cases including identical and similar cases, the bail would be automatically cancelled, and the Investigating Officer may report to that effect.

7. Bail bond to be executed before the Trial Court having jurisdiction to try the case. It would be open for the Trial Court concerned to give time to furnish the solvency certificate if prayed for.

8. If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities will release the Applicants forthwith only if they are not required in connection with any other offence for the time being.

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

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