

(2023) 11 GUJ CK 0052

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - After Chargesheet)
No.13237 Of 2023

Babita W/O Jitendra Jayantiya Kishanbhai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 29-11-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 120B, 341, 365, 395, 397, 412
Gujarat Police Act, 1951 — Section 135

Citation : (2023) 11 GUJ CK 0052

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Hasmeet B Gill, Dhruv Toliya, 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 C.R.No.11211045230041 of 2023 registered with Sayla Police Station, District Surendranagar for the offence punishable under Sections 341, 365, 395, 397, 120B and 412 of the Indian Penal Code and under Section 135 of the Gujarat Police Act.

2. Learned advocate Ms. Gill appearing on behalf of the applicant submits that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions. Learned advocate for the applicant further submits that the FIR has been registered on 18.02.2023 against unknown persons. The so-called incident occurred on 17.02.2023. The applicant accused has been arrested on 03.03.2023 and since then he is in judicial custody. The investigation is already concluded and after submission of the charge-sheet, present bail application is preferred. It is further submitted that name of the present applicant accused has come on surface on the basis of the statement of

the co-accused recorded by the investigating officer. It is further submitted that during the course of investigation, from the backyard of the house of the present applicant accused, some silver jewellery was found by the IO. The persons who have actively participated in commission of crime have already been enlarged on bail by this Court. Considering the role attributed by the present applicant at the time of commission of crime, bail application of the applicant may be entertained. It is further submitted that the co-accused persons with graver role than the role of the present applicant have been enlarged on bail and therefore considering the principle of law of parity, application of the applicant may be entertained.

3. Learned APP Ms. Jirga Jhaveri appearing on behalf of the respondent-State has objected present bail application with vehemence and submitted that certain stolen muddamal was recovered from the backyard of the house of the present applicant accused. A specific role of the applicant accused is clearly found out from the charge-sheet papers. Hence, bail application of the applicant may not be entertained.

4. Learned advocate Mr. Tolia appears for the original complainant has objected present bail application with vehemence and he has adopted the submissions canvassed by learned APP and submitted that the bail application of the applicant may not be entertained.

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

6. I have heard the learned advocates appearing on behalf of the respective parties. I have perused the police papers as well as other documents produced by the applicant along with the memo of the application. It is found out from the record that applicant accused is in judicial custody since 3rd March, 2023. The investigation is already completed and after submission of the charge-sheet, present bail application is preferred. The co-accused persons who have actively participated in commission of crime have already been enlarged on bail by this Court. Considering the principle of law of parity, I am of the opinion that bail application of the applicant deserves consideration.

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

8. 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.

9. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with C.R.No.11211045230041 of 2023

registered with Sayla Police Station, District Surendranagar, 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 Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

10. 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.

11. 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.

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