

(2020) 11 GUJ CK 0020
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 16678 Of 2020

Bhavinbhai Natvarlal Panchal

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 06-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 120(b), 406, 409, 420, 465, 467, 468, 471, 472, 475

Citation : (2020) 11 GUJ CK 0020

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

Bench : Single Bench

Advocate : D K.Puj, Nisha Thakore

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This Application is filed by the Applicant - Accused under Section 439 of the Code of Criminal Procedure for enlarging on Regular Bail in connection with FIR No. 11191014200362/2020 registered with Ellisbridge Police Station, District Ahmedabad City for the offences punishable under Sections 406, 420, 465, 467, 468, 471, 472, 475, 409, 34 and 120(b) of the Indian Penal Code.

2. Heard learned Advocate Mr. D.K.Puj for the Applicant and learned APP Ms. Nisha Thakore for the Respondent State through Video Conference.

Learned Advocat Mr. Dhruraj Rana appeared for Respondent No.2 - Original Complainant. Registry to Accept his Vakalatnama and place on record.

Submission of the Parties:

3. Rule. Learned APP waives service of Rule for the Respondent State of Gujarat and learned Advocate Mr. Dhruraj Rana appears and waives service of notice on behalf of Respondent No.2 - Original Complainant.

4. Learned Advocate for the Applicant / Accused has submitted that the Applicant Accused is innocent as he has not taken part in the offence as alleged. He has family roots in the society and therefore, he is not likely to flee away from justice. That the charge sheet is filed. That he will abide by whatever conditions imposed by the Hon'ble Court. He has further vehemently submitted that there is no direct involvement of the Applicant Accused in the present case so far as allegation is concerned. There are no antecedents against the Applicant Accused. Learned Advocate for the Applicant has further submitted that the Coordinate Bench has enlarged the co-accused named Alpeshbhai Natvarbhai Vegda (Patel) vide order dated 5.11.2020 passed in Criminal Misc. Application No. 15424 of 2020. He has therefore prayed that discretion may kindly be exercised and grant bail to the Applicant Accused.

4. Per contra, learned APP has opposed the bail application and submitted that the discretion may not be exercised, looking to the nature and gravity of offence and involvement of the Applicant / Accused. That the charge sheet is filed. Learned APP has further submitted that if the Hon'ble Court is inclined to grant bail then in such case strict conditions may be imposed to secure the presence of the Applicant Accused.

5. Learned Advocate Mr. Dhruraj Rana appearing on behalf of the Respondent No.2 - Original Complainant has also opposed the bail application and prayed that discretion may not be exercised and the application may be dismissed.

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 Applicant accused has come for this Application after the charged sheet is filed.

(b) That even if it is a prima facie case, then also as such there is no antecedent.

(c) That the alleged amount has been deposited in the account of partnership firm and accordingly, the applicant is ready and willing to deposit Rs.9,00,000/- so far his share is concerned, before the learned Trial Court.

(d) 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 Applicant accused at the time of trial and tampering and hampering with the witnesses by the accused.

(e) That the learned Advocate for the Applicant has submitted that the Applicant Accused is not likely to flee away.

(f) That the Applicant Accused is in custody since 24.7.2020.

(g) That the Coordinate Bench has enlarged the co-accused vide order dated 5.11.2020 in Criminal Misc. Application No. 15424 of 2020.

(h) 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.

6. Having heard the arguments advanced by the learned Advocates for the respective 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 Applicant Accused at the time of Trial etc. and the role attributed to the present Applicant accused, the present Application deserves to be allowed and accordingly stands allowed. The Applicant Accused - BHAVINBHAI NATVARLAL PANCHAL is ordered to be released on bail in connection with FIR No. 11191014200362/2020 registered with Ellisbridge Police Station, District Ahmedabad City, on executing a personal bond of Rs.10,000/- with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that he 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 his 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) surrender passport, if any, to the Trial Court within a week. If he does not possess passport, he shall file an Affidavit to that effect.

(h) deposit Rs.2,50,000/- within a period of one week from his release and remaining amount of Rs.6,50,000/- latest by 30.6.2021 before the concerned Trial Court, without prejudice to his rights and contentions.

(i) file an undertaking for depositing the total amount of Rs.9,00,000/- before the Registry, after his release on bail.

(j) shall maintain all the rules and regulations framed by the Corporation / Municipality regarding contemporary status of corona virus/Covid-19, State Government or by any competent authority, including social distancing.

6.1 With respect to the condition no. 6(h) as mentioned above, it is made clear that on failure of depositing the amount of Rs.2,50,000/- within a period of one

week from his release, and the remaining amount of Rs.6,50,000/- latest by 30.6.2021, before the concerned Trial Court, the bail shall be liable to be cancelled.

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 Applicant forthwith only if he is not required in connection with any other offence for the time being.

9. Rule is made absolute. The Registry is directed to communicate this order by Fax / by E-mail to the concerned Court / Authority.