

(2024) 03 GUJ CK 0019

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 17196 Of 2023 (For Regular Bail - After Chargesheet)

Biralben W/O Jatinkumar Hareshbhai Darji

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-03-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173(8), 438
Indian Penal Code, 1860 — Section 34, 120(B), 201, 302

Citation : (2024) 03 GUJ CK 0019

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : P P Majmudar, Monali Bhatt

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. Rule. Learned APP waives service of notice of rule for respondent – State of Gujarat.

2. 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.11197047230494/2023 registered with the Savli Police Station, Vadodara for the offence punishable under Sections 302, 201, 34 and 120(B) of the Indian Penal Code.

3. Learned advocate for the applicant submitted that the so-called incident has taken place for the period between 30.05.2023 to 31.05.2023, for which, the FIR has been lodged on 01.06.2023 and the applicant has been arrested in connection with the same on 04.06.2023 and since then, she is in judicial custody. Learned advocate submitted that now the investigation is completed and after submission of the chargesheet, the present application is preferred. Learned advocate submitted that during the course of investigation, name of the

present applicant has come on surface solely on the ground that the present applicant was having extra marital relationship with one co-accused, Dharmesh and it is alleged by the prosecuting agency that at the instance of the present applicant, entire conspiracy is hatched by the co-accused, Dharmesh with the help of other co-accused and those persons have acted in a particular manner and ultimately, the deceased was died. Learned advocate further submitted that so far as the role of the present applicant is concerned, it is alleged that she was in constant touch with the co-accused, Dharmesh, except this, no document connecting the present applicant with crime is produced on record by the IO along with the compilation of chargesheet. Learned advocate submitted that on conclusion of investigation, chargesheet was filed with a rider to continue the investigation and, thereafter, report under Section 173(8) of the Criminal Procedure Code has been submitted by the IO but no specific incriminating material is found out against the applicant. It is, therefore, urged that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

4. 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 the name and specific role of the present applicant is clearly spelt out from the papers of the chargesheet. Learned APP submitted that initially FIR was filed by the present applicant but thereafter during the course of investigation, it is found out that entire crime is committed at the instance of the present applicant and there are ample material and evidence available connecting the present applicant – accused in the aforesaid commission of crime and even involvement of the present applicant is also found out. Learned advocate submitted that the present applicant was in constant touch with the co-accused, who is the main perpetrator of the crime. It is, therefore, urged that the present application 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 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 from the record that the present application is preferred after submission of the chargesheet and now the investigation is completed and the applicant is in jail since 04.06.2023. I have considered the role attributed to the present applicant and the investigation papers collected by the IO and found that except CDR, there is nothing on record, which connecting the present applicant – accused in the commission of crime. Therefore considering the above factual aspects, the present application deserves to be allowed.

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. The applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.11197047230494/2023 registered with the Savli Police Station, Vadodara 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 she 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 she 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.

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