

(2023) 03 GUJ CK 0082
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 21944 Of 2022

Chandreshkumar Ramjibhai Limbat

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 17-03-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 120(B), 302
Gujarat Police Act, 1951 — Section 135

Citation : (2023) 03 GUJ CK 0082

Hon'ble Judges : Nirzar S. Desai, J

Bench : Single Bench

Advocate : Darshan A. Dave, Maithili Mehta

Final Decision : Allowed

Judgement

Nirzar S. Desai, J

1. Heard learned advocate Mr.Dave for the applicant and learned Additional Public Prosecutor Ms.Mehta for the respondent – State.

2. By this successive bail application filed under Section 439 of the Code of Criminal Procedure, 1973, the applicant is seeking release on regular bail in connection with the FIR being C.R.No.11188003210168 of 2021 registered with Bhiloda Police Station, Dist.Arvali for offences punishable under Sections 302 and 120(B) of the Indian Penal Code and Section 135 of the Gujarat Police Act.

3. Learned advocate Mr.Darshan Dave for the applicant draws attention of this Court that earlier bail application preferred by the applicant being Criminal Miscellaneous Application No.22686 of 2021 was withdrawn by the applicant on 17.03.2022 i.e. exactly before one year. He further points out that applicant is behind the bar since 28.04.2021 i.e. almost for two years. He states that present applicant has been arrested on the basis of circumstantial evidence and though the trial is going on, out of 32 witnesses only 17 witnesses are examined and 15

witnesses are yet to be examined and, therefore, trial is likely to go on for longer time. He also submits that in absence of there being any direct evidence against the present applicant as well as considering the fact that the present applicant is behind the bar since two years only on the basis of circumstantial evidence, he may be enlarged on bail by imposing suitable terms and conditions.

4. On the other hand, though learned APP Ms.Mehta vehemently has opposed this application, she could not dispute that out of 35 witnesses only 17 witnesses have been examined. She has submitted that trial may be expedited instead of releasing the present applicant on bail considering the fact that present applicant is arrested in connection with offence under Section 302 of the Indian Penal Code.

5. Upon inquiry, learned advocate Mr.Dave has submitted that there are no past antecedents in respect of present applicant and this fact could not be disputed by learned Additional Public Prosecutor Ms.Mehta.

6. In the facts and circumstances of the case and considering the nature of allegations, this Court is of the opinion that, discretion is required to be exercised to enlarge the applicant on regular bail. This Court has considered the following facts while exercising discretion in favour of the applicant :-

- (i) the applicant is in jail since 28.04.2021;
- (ii) the investigation is over and the charge-sheet is filed;
- (iii) there is no direct evidence against the present applicant;
- (iv) out of 32 witnesses only 17 witnesses have been examined during the course of the trial and the completion of trial may take its own time;

7. In view of the aforesaid facts, without discussing the evidence in detail, this Court, prima facie, is of the opinion that, this is a fit case to exercise the discretion and enlarge the applicant on regular bail. Hence, present application is allowed and the applicant is ordered to be released on regular bail in connection with the FIR being C.R.No.11188003210168 of 2021 registered with Bhiloda Police Station, Dist.Arvali on executing personal bond of Rs.10,000/- (Rupees Ten thousand only) with one surety of the like amount to the satisfaction of the learned 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 injuries to the interest of the prosecution;
- [c] surrender passport, if any, to the lower court within a week;
- [d] not leave India without prior permission of the Sessions Judge concerned;
- [e] furnish latest 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 trial Court;

[f] mark presence before the concerned police station in the first week of every month till the trial is over;

[g] the applicant is directed to cooperate with the completion of trial.

8. The Authorities will release the applicant only if the applicant 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.

9. Bail bond to be executed before the learned 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. At the trial, learned 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.

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