

(2022) 05 GUJ CK 0029

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 7780 Of 2022

Chandu @ Chandmal Pyarchand Kumavat

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 09-05-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Gujarat Prohibition Act, 1949 — Section 65(a), 65(e), 98(2), 116(2)

Citation : (2022) 05 GUJ CK 0029

Hon'ble Judges : Niral R. Mehta, J

Bench : Single Bench

Advocate : HR Prajapati, J.K. Shah

Final Decision : Allowed

Judgement

Niral R. Mehta, J

1) At the outset, Mr. H.R. Prajapati, learned advocate for the applicants has submitted that he does not press the present application qua the applicant No.1.

2) This application is filed qua applicant No. 2, under Section 439 of the Code of Criminal Procedure, 1973 for regular bail in connection with FIR registered as C.R. No. 11822021220555 of 2022 with Navsari Rural Police Station, Navsari for the offence punishable under Sections 65(a), 65(e), 116(2) and 98(2) of the Gujarat Prohibition Act.

3) Learned advocate appearing on behalf of the applicant submits that considering the nature of offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

4) On the other hand, the learned Additional Public Prosecutor appearing for the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.

5) Learned Advocates appearing on behalf of the respective parties do not press

for a further reasoned order.

6) I have heard the learned advocates appearing on behalf of the respective parties and perused the papers. So far as the applicant No.2 is concerned, following aspects are considered :-

I) The F.I.R. is registered on 17.03.2022 for the offence which is alleged to have taken place on 17.03.2022;

II) The applicant is in custody since 29.03.2022;

III) The Investigation is practically over and the charge-sheet is yet not filed by the Investigating Officer;

IV) Considering version of the FIR, role of the present applicant prima facie appears to be not serious in nature and there is also no antecedent reported against him;

V) During the course of custody, no recovery and no discovery is made.

VI) Keeping in mind the origins of law and the punishment prescribed thereof, all the offences are Magistrate Triable and the trial may take its own course; no fruitful purpose would be served by keeping in the present applicant in jail during the pendency of the trial;

VII) No adversial fact would be brought on record by learned Additional Public Prosecutor against the applicant.

7) This Court has 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.

8) In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the First Information Report, 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, qua applicant No.2. The applicant is ordered to be released on regular bail in connection with C.R. No. 11822021220555 of 2022 with Navsari Rural Police Station, Navsari on executing a personal bond of Rs.10,000/= (Rupees Ten 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 & shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;

(c) surrender passport, if any, to the Trial Court within a week;

(d) not leave the State of Gujarat without prior permission of the Trial Court concerned;

(e) mark presence before the concerned Police Station once in a month for a period of six months between 11.00 a.m. and 2.00 p.m.;

(f) furnish the present address of his 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 Trial 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.

11) 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.

12) 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.

13) The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent.

Direct Service is permitted.