

(2024) 05 GUJ CK 0018

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 8067 Of 2024 (For Successive Regular Bail - After Chargesheet)

Dharmeshkumar @ Dharmo Pravinbhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 09-05-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 120(B), 201, 302

Citation : (2024) 05 GUJ CK 0018

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Nandish H Thackar, Dhawan Jayswal

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, he 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 FIR is filed against unknown persons, however during

the course of investigation, it is found out that the complainant herself is involved in the commission of crime and, therefore, he has been arraigned as accused and subsequently chargesheeted. Learned advocate submitted that chargesheet is filed against 5 accused persons and the applicant is shown as accused no.4 in the chargesheet. Learned advocate submitted that the complainant – original accused no.5 was having extra marital affairs with the applicant and the deceased is the husband of the accused no.5 – original complainant and the accused nos.4 and 5 have hatched conspiracy to eliminate the husband of the accused no.5 and they have given contract to the accused no.3 and at the instance of the accused no.2, the accused no.1 & 2 have executed the offence by arranging one party, wherein the deceased was called upon, where the accused no.1 had pressed the neck of the deceased, whereas the accused no.2 had caught hold the legs of the deceased. Learned advocate submitted that except CDR, there is no other evidence connecting the applicant with the commission of crime. Learned advocate submitted that the accused no.5 has already been considered by this Court. Learned advocate submitted that entire case of the prosecution hinges upon circumstantial evidence. It is, therefore, urged that considering the nature of the offence and on the ground of parity, 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. 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. The co-accused have been considered by the Coordinate Bench of this Court as well as by this Court. Therefore considering the above factual aspects and on the ground of parity, 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.