

(2024) 02 GUJ CK 0082
In the Gujarat High Court

Case No : r/criminal misc.application (for regular bail - after chargesheet) no.
22955 OF 2023

Dilbagsinh @ Bagga Jashvantsing

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 27-02-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(c), 20(b), 37

Citation : (2024) 02 GUJ CK 0082

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Salim M Saiyed, Ronak Raval

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. Rule. Learned APP waives service of notice of Rule for and on behalf of respondent – State.

2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with C.R.No.11824006230112 of 2023 registered with Uchchhal Police Station, District Tapi for the offence punishable under Sections 8(c), 20(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act ('NDPS Act' for short).

3. Learned advocate Mr. Salim Saiyed submits that application is filed after submission of charge-sheet. The investigation is already concluded. Learned advocate Mr. Saiyed further submits that on 19.02.2023, the members of the raiding party have received some secret information and on the basis of the same, they have intercepted one truck and during the course of search, they found contraband substance Ganja weighing 573.120 kg., worth Rs.57,31,200/- from the said truck. The driver and cleaner of the said truck were apprehended

immediately and thereafter during the course of interrogation of the said accused persons, name of the applicant accused has come on surface that at the instance of the applicant accused the said contraband substance Ganja was loaded in the truck. Learned advocate Mr. Saiyed further submits that admittedly, at the time of incident, present applicant accused was not found available at the place of occurrence and nothing is recovered and discovered from the conscious and physical possession of the applicant accused. The applicant accused has been arraigned as an accused only on the basis of the statement made by the co-accused persons before the investigating officer. Except that no any incriminating material is found out against the applicant accused on the basis of which it can be said that he has actively participated in commission of crime. Learned advocate Mr. Saiyed further submits that at the time of submission of charge-sheet against the present applicant accused, the investigating officer has recorded that on the basis of the CDR, it is found out that applicant accused was in constant touch with other co-accused persons. Except that, no other documents are available in the entire compilation of charge-sheet papers. Learned advocate Mr. Saiyed submits that at the time of objecting the bail application before the concerned trial Court, the prosecuting agency has raised objection solely on the count that one another offence is registered against the applicant accused at Murshidabad, West Bengal, wherein present applicant accused has been acquitted by the concerned Special Court, NDPS. Therefore, at this juncture, it can safely be said that there is no antecedent against the applicant accused. Learned advocate Mr. Saiyed submits that considering the above stated factual aspects, bail application of the applicant may be entertained. Learned advocate Mr. Saiyed further submits that though the quantity of contraband article Ganja recovered by the members of the raiding party is huge and considered to be larger than the commercial quantity, considering the role attributed to the applicant accused at the time of commission of crime as he was not found available at the place of occurrence and he has been arraigned as an accused only on the basis of the statement made by the co-accused persons during the course of interrogation in police custody, in that event, rigors of Section 37 of NDPS Act would not come into play. Learned advocate Mr. Saiyed further submits that applicant is in jail since last more than one year and therefore he may be enlarged on bail by imposing suitable terms and conditions.

4. Learned APP Mr. Ronak Raval has objected present bail application with vehemence and submitted that the co-accused persons were caught red-handed by the members of the raiding party along with huge quantity of contraband substance Ganja and therefore FIR was registered and pursuant to the same, investigation was carried out by the investigating officer in particular direction and during the course of investigation, name and specific role of the applicant accused has been clearly spelt out. It is further submitted that applicant accused is permanent resident of State of Punjab. The specific role attributed to the applicant accused is that at his instance the contraband substance Ganja was

loaded in the truck and said truck was passed through different States and the said truck was intercepted by the members of raiding party on the basis of the specific input received by them. The applicant accused was also in constant touch with the driver of the truck as well as other co-accused persons and the said fact also gets corroboration from the CDR which was collected by the investigating officer during the course of investigation. It is further submitted that huge quantity of contraband substance Ganja was recovered from the conscious possession of the co-accused persons and applicant is the main accused person at whose instance the said huge quantity of contraband article was loaded in the truck. Learned APP Mr. Raval further submits that one another FIR under the provisions of the NDPS Act was also registered against the applicant accused and though in the said case, he has been acquitted by the concerned Court, considering the past conduct of the applicant, he may not be enlarged on bail. Learned APP Mr. Raval further submits that the quantity seized by the members of the raiding party would fall under commercial quantity and therefore rigors of Section 37 of the NDPS Act would come into play. Thus, considering the aforesaid factual aspects, applicant may not be enlarged on bail.

5. 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 investigation is already concluded and present application is filed after submission of charge-sheet. The applicant is in jail since 20.02.2023. The applicant has been arraigned as an accused on the basis of the statement of the co-accused. Thus, considering the role played by the applicant and above stated factual aspects, I am inclined to consider this application.

6. 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.

7. 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.

8. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with C.R.No.11824006230112 of 2023 registered with Uchchhal Police Station, District Tapi, 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 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;

[c] surrender passport, if any, to the lower court within a week;

[d] not to enter into the State of Gujarat without prior permission of the Sessions Judge concerned except for marking presence and attending the Court proceedings;

[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;

9. 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. 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.

10. 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.

11. The present application stands allowed accordingly. Rule is made absolute. Direct service is permitted.