

(2024) 02 GUJ CK 0088

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Successive Regular Bail - After Chargesheet) No. 22409 Of 2023

Dineshkumar Prabhatsinh Solanki

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 28-02-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 376

Citation : (2024) 02 GUJ CK 0088

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Ashish M Dagli, Jyoti Bhatt

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. Rule. Learned APP waives service of notice of Rule 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. 11187008230395 of 2023 registered with the Virpur Police Station, District Mahisagar for the offence punishable under Section 376 of the Indian Penal Code.

3. Learned advocate Mr. Dagli appearing on behalf of the applicant has submitted that the so called incident has occurred on 01.08.2023 and FIR was registered on 08.09.2023, there is 38 days delay in registering the FIR and in connection with the same, the applicant was arrested on 11.09.2023 and since then, he is in judicial custody. It is also submitted that the investigation is already completed and the present application is filed after submission of the charge-sheet. Learned advocate further submits that FIR was registered by the victim herself and if the Hon'ble Court would make a cursorily make a glance upon the contents of the

FIR, in that event, it would be found out that by on her own violation and will, she has gone with the present applicant in public transports. It is further submitted that at the time of preferring bail application before the court below, specific averments was made by the then learned advocate for the applicant that despite all the efforts, the applicant could not be traced out the victim and he has received certain information from the reliable sources that she has already eloped with someone and also solemnized the marriage with him and the said marriage has also been registered before the competent authority. Learned advocate submitted that considering the above stated factual aspect, the present applicant may be enlarged on regular bail by imposing suitable terms and conditions.

4. Learned APP appearing on behalf of the respondent-State has opposed the present bail application. It is submitted that the role of the present applicant is clearly spelt out from the body of the compilation of the charge sheet papers. He further submitted that considering the role attributed by the present applicant, the present application may not be considered.

5. Learned advocates appearing on behalf of the respective parties do not press for further reasoned order.

6. I have perused the police papers as well as documents produced by the applicant along with the memo of the application. It is found out from the record that the applicant is jail since 11.09.2023. The investigation is already completed and the present application is filed after submission of the charge-sheet. It is found out from the contents of the FIR that by on her own violation and will, the victim has gone with the present applicant in public transports. It is also found out that the victim has already solemnized the marriage with someone else and registration to that effect was also made before the competent authority. I have considered the role attributed to the applicant at the time of commission of crime. Therefore, considering the above stated factual aspect and considering the role attributed by the present applicant at the time of commission offence, I am inclined to exercise the discretion in favour of the applicant.

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 and the applicant is ordered to be released on regular bail in connection with C.R. No. 11187008230395 of 2023 registered with the Virpur Police Station, District Mahisagar, 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 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. to 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 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.

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. The present application stands allowed accordingly. Rule made absolute to the aforesaid extent.

Direct service is permitted.