

(2022) 06 GUJ CK 0016
In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 9638 Of 2022

Divyeshbhai Bhagvanjibhai Han

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 03-06-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 379(b)

Citation : (2022) 06 GUJ CK 0016

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Ashish M Dagli, Manan Mehta

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This application is filed by the applicants – accused under Section 439 of the Code of Criminal Procedure for enlarging the applicants on Regular Bail in connection with C. R. No. 11189006220295 of 2022 registered with Tankara Police Station, District: Morbi for the offences punishable under Sections 379(b) and 114 of the Indian Penal Code, 1860 (herein after referred to as “the IPC”)

2. Heard learned advocate Mr. Ashish M. Dagli for the applicants and learned APP Mr. Manan Mehta for the respondent - State.

3. Rule. Learned APP waives service.

Submissions of the Parties:

4. Learned advocate for the applicants - accused has submitted that the applicants - accused are innocent persons and falsely implicated in the offence in question. It is submitted that the investigation is almost over and hence, further custodial interrogation may not be required. Further, the applicants have no antecedents. Moreover, the applicants have family roots in the society and

therefore, the applicants are not likely to flee away from justice. That the applicants will abide by whatever conditions imposed by the Court. The learned advocate for the applicants has further vehemently submitted that there is no direct involvement of the applicants - accused in the present case so far as allegation is concerned. It is, therefore, prayed that discretion may kindly be exercised and grant bail to the applicants - accused.

5. Per contra, learned APP has vehemently argued that charge sheet in the matter is yet to be filed and hence, there are all chances of hampering and tampering with the evidence. Therefore, it is urged that discretion may not be exercised and ultimately, the learned APP has opposed the grant of bail looking to the nature and gravity of offence, involvement of the applicants - accused.

Merits of the Case:

6. This court has considered the following aspects:

(a) the investigation is stated to be almost over and in that case, further interrogation may not be required;

(b) the applicants stated to have no antecedents;

(c) further as per the catena of decisions of Hon'ble Apex Court, there are mainly three factors which are required to be considered by this Court i.e. prima facie case, availability of applicant - accused at the time of trial and tampering and hampering with the witnesses by the accused;

(d) that the learned advocate for the applicants has submitted that the applicants - accused are not likely to flee away;

(e) that the applicants - accused are in custody since 11.05.2022;

(f) the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. C.B.I. Reported in (2012) 1 SCC 40, wherein it is held that bail is a rule and jail is an exception and there should not be pre-trial punishment.

7. Having heard the learned advocates for the parties and perusing the record produced in this case as well as taking into consideration the facts of the case, nature of allegations, gravity of accusation, availability of the applicants - accused at the time of trial etc. and the role attributed to the present applicants - accused, the present application deserves to be allowed and accordingly stands allowed. The applicants - accused are ordered to be released on regular bail in connection with above-referred FIR, on executing personal bond of Rs.10,000/- each with one surety each of the like amount to the satisfaction of the trial Court, subject to the following conditions that the applicants shall:

(a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer or tamper with the evidence;

(b) maintain law and order and not to indulge in any criminal activities;

(c) furnish the documentary proof of complete, correct and present address of residence to the Investigating Officer and to the trial Court at the time of executing the bond and shall not change residence without prior permission of the trial Court;

(d) provide contact numbers as well as the contact numbers of the sureties before the trial Court. In case of change in such numbers inform in writing immediately to the trial Court;

(e) file an affidavit stating immovable properties whether self acquired or ancestral with description, location and present value of such properties before the trial Court, if any;

(f) not leave India without prior permission of the trial Court;

(g) surrender passport, if any, before the trial Court within a week. If do not possess passport, then shall file affidavit to that effect;

(h) mark presence before the concerned police station on every 1st day of the English Calendar month between 11:00 a.m. and 2:00 p.m. for a period of one year;

(i) shall maintain all the rules and regulations framed by the Municipality regarding contemporary status of corona virus/Covid-19, State Government or by any competent authority, including social distancing.

7.1 Bail bonds to be executed before the trial Court having jurisdiction to try the case. It would be open for the trial Court concerned to give time to furnish the solvency certificate, if prayed for.

7.2 If breach of any of the above conditions is committed, the trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities shall release the applicants forthwith only if the applicants are not required in connection with any other offence for the time being.

7.3 At the trial, the concerned trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

8. Rule is made absolute accordingly. Direct service is permitted.