

(2023) 12 GUJ CK 0047

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 21080 Of 2023 (For Successive Regular Bail - After Chargesheet)

Gaurav @ Gaurang S/O Mohendrasing Kotval

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 14-12-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 120(B)
Arms Act, 1959 — Section 25(1B)

Citation : (2023) 12 GUJ CK 0047

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Piyush B Trivedi, Radheshyam K Dave, HK Patel

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.11209020231096/2023 registered with the Idar Police Station, Sabarkantha for the offence punishable under Sections 120(B) and 114 of the Indian Penal Code and under Section 25(1-B) of the Arms Act.

3. Learned advocate for the applicant submitted that the so-called incident has taken place on 14.08.2023 and on the very same day i.e. on 14.08.2023, FIR has been lodged and the applicant has been arrested on 01.09.2023 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 the applicant is not

named in the FIR and the applicants are arraigned as accused in the aforesaid offence only on the basis of the statement of the co-accused and there is no recovery or discovery at the instance of the present applicants – accused. Learned advocate submitted that it is alleged against the applicant is that he has supplied the arms to the original accused no.1, however in fact, the applicant no.1 is having valid licence to carry on such business at Jammu & Kashmir and except this, there is no role attributed to him. Learned advocate submitted that against the applicant, another offence has been registered with Sola High Court Police Station, wherein in the said offence, the applicant has been bailed out. It is, therefore, urged that considering the nature of the offence and the role attributed to the present applicant, 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 role of the present applicant is clearly spelt out from the papers of the chargesheet. Learned APP submitted that in fact, the accused have forged the licence, for which, another FIR at Sola High Court Police Station has been registered, which suggests his involvement in the aforesaid offence. 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 that the investigation is completed and after submission of the chargesheet, the present application is preferred. The applicant is in jail since their arrest i.e. since 01.09.2023. The applicant is arraigned as accused only on the basis of the statement made by the co-accused and there is no recovery or discovery at the instance of the present applicants – accused. I have also considered the role attributed to the present applicant. Therefore considering the above factual aspects and the penal provision prescribed under the statute, 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.11209020231096/2023 registered with the Idar Police Station, Sabarkantha on executing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand only) each with one surety each 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. 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 they are 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.