

(2023) 12 GUJ CK 0089

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - Before Chargesheet)
No. 23284 Of 2023

Hasmukhbhai Chhaganbhai Halpati

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 28-12-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Gujarat Prohibition Act, 1949 — Section 65(a), 65(e), 98(2), 81, 116B

Citation : (2023) 12 GUJ CK 0089

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Atraya K Trived, Hardik Mehta

Final Decision : Allowed

Judgement

Hasmukh D. Suthar, J

1. Rule returnable forthwith. The learned APP waives service of notice of rule for and on behalf of the respondent-State.

2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with I-C.R.No. 11200010232212 of 2023 registered with the Valsad Town Police Station, Valsad for the offences punishable under Sections 65(a), 65(e), 98(2), 81, 116-B of the Gujarat Prohibition Act, 1949.

3. The learned advocate appearing on behalf of the applicant submits that present applicant is falsely involved in the commission of the offence. He has further submitted that the applicant is the driver of the vehicle. He has further submitted that the applicant was arrested since 29th November, 2023. He has further submitted that after his arrest, nothing incriminating was recovered or discovered from the applicant. He has further submitted that the investigation qua the present applicant has been completed and therefore, no further custodial

interrogation of the present applicant is required. He has further submitted that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

4. The learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. He has further submitted that the present applicant is not only driver of the vehicle but he is conscious possession of huge quantity of liquor is found i.e. 2400 bottles of Indian Made Foreign Liquor. He was caught red handed by the police while transporting the huge quantity of liquor. He has further submitted that the applicant has one criminal antecedent. He has further submitted that the investigation is yet to be completed and charge-sheet has not filed. Therefore, he has requested this Court to dismiss the present application.

5. The 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.

I have also taken into consideration the following aspects :

- (1) The applicant was arrested since 29.11.2023.
- (2) The investigation is going on and the charge-sheet is yet to be filed, but substantial investigation qua the accused is over.
- (3) The applicant has one criminal antecedent.
- (4) 2400 bottles of IMF worth Rs.3,06,000/- liquor was found from the present applicant, nothing is required to further recovered or discovered from the present accused.

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.

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 I-C.R.No. 11200010232212 of 2023 registered with the Valsad Town Police Station, Valsad on executing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand) 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 till the charge-sheet is filed 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;

(f) shall not indulge such type of activities in future.

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.

11. 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.

12. 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. Rule is made absolute to the aforesaid extent. Direct service is permitted.