

(2024) 04 GUJ CK 0010
In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - After Chargesheet) No. 6231 Of 2024

Hussainsha @ Hakko Ahamadsha Shahmadar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 02-04-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 120B, 143, 147, 148, 149, 302, 307, 323, 341, 427
Gujarat Police Act, 1951 — Section 135
Arms Act, 1959 — Section 25(1B)
Gujarat Control Of Terrorism And Organised Crime Act, 2015 — Section 3(1), 3(2), 3(4)

Citation : (2024) 04 GUJ CK 0010

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Krunal L Shahi, Dhawan Jaiswal

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. 11189003212003 of 2021 registered with Morbi City 'A' Division Police Station, District Rajkot for the offence punishable under Sections 302, 307, 323, 341, 427, 143, 147, 148, 149, 120B and 34 of the IPC and Section 25(1-B) of the Arms Act, Section 135 of the Gujarat Police Act and Section 3(1), 3(2), 3(4) of the Gujarat Control of Terrorism and Organised Crime Act, 2015 (hereinafter referred to as the 'GUJCTOC Act' for short).

3. Learned advocate Mr. Krunal Shahi appearing on behalf of the applicant has submitted that the so called incident has occurred on 07.08.2021 and FIR was registered on 08.09.2021 and in connection with the same, the applicant was arrested on 11.12.2022 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 submits that FIR was registered against five known persons and four unknown persons. It is further submitted that the Investigating Officer has preferred an application to invoke the provisions of GUJCTOC Act before the Magistrate and subsequently on 29.09.2021, the application was considered and thereafter the applicant has been arraigned as an accused on the basis of the invocation of provisions of GUJCTOC Act. It is submitted that there is no recovery or discovery at the instance of the present applicant and the applicant is also not identified in TI parade. Learned advocate submitted that the prosecuting agency has put reliance upon five offences, however five offence were registered against the present applicant before the invocation of GUJCTOC Act. It is further submitted that the applicant was not named in the FIR and subsequently arranged as an accused on the basis of invocation of provisions of GUJCTOC Act. It is submitted that other accused persons who were named in the FIR, have already been enlarged on bail by this Court. Learned advocate submits that considering the role attributed to the applicant as well as on the ground of principle of law of parity and period of incarceration spent by him in judicial custody, the present applicant may be enlarged on 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. Learned APP submitted that there are number of offences registered against the Gang and at the time of commission of crime, the applicant has actively participated in the commission of crime and there are evidence available on record.

5. Learned APP has relied upon the decision of Hon'ble Supreme Court in the case of Zakir Abdul Mirajkar Vs. the State of Maharashtra & Ors., rendered in Criminal Appeal No.1125 of 2022, and submitted in the said case, it has been specifically observed by the Hon'ble Supreme Court that, 'it is settled law that more than one charge sheet is required to be filed in respect of the organized crime syndicate and not in respect of each person who is alleged to be a member of such a syndicate'. Thus, from the aforesaid decision it is clear that requirement of registration of more than one charge-sheet, as per the provisions of GUJCTOC Act, would be in respect of organized crime syndicate and not in respect of each person who is alleged to be a member of such syndicate. It is, therefore, urged that the present application may not be entertained.

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

7. 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 11.12.2022. The investigation is already completed and the present application is filed after submission of the charge-sheet. It is an admitted position of fact that at the time of registration of FIR, the prosecuting agency has put reliance upon total five offences registered against him, however all the offences are registered before promulgation of the provision of the GUJCTOC Act. I have considered the role attributed to the present applicant – accused at the time of commission of those offences and the role attributed to other co-accused, who have been considered by this Court. I have also considered the punishment prescribed under the statute in connection with those offences incorporated in the compilation of chargesheet. Therefore considering the above factual aspects as also considering the period of incarceration undergone by the applicant and also on the principle of law of parity, the present application deserves to be allowed.

8. 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.

9. 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.

10. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with C.R.No. 11189003212003 of 2021 registered with Morbi City 'A' Division Police Station, District Rajkot, 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 nearby 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;

[g] not enter into Saurashtra region till completion of trial except for marking presence as also for attending court proceedings;

11. 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.

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.

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

Direct service is permitted.