

(2021) 02 GUJ CK 0019
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 19360 Of 2020

Jagdishbhai Gopalbhai Makwana

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 04-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Prevention Of Corruption (Amendment) Act, 2018 — Section 7(A)(B)(C), 13(2)

Citation : (2021) 02 GUJ CK 0019

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

Bench : Single Bench

Advocate : Nirav C Sanghavi, LB Dabhi

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This Application is filed by the Applicant â?" Accused under Section 439 of the Code of Criminal Procedure for enlarging the applicant on Regular

Bail in connection with FIR being I-C.R. No. 2 of 2020 registered with A.C.B. Police Station, Junagadh for the offences punishable under Sections

7(A)(B)(C) and 13(2) of the Prevention of Corruption (Amendment) Act, 2018.

2. Heard learned advocate Mr.Nirav Sanghavi for the Applicant and learned APP Mr. LB Dabhi for the Respondent State through Video

Conference.

Factual Matrix of the Case:

3. The brief facts of the present case is that an FIR came to be lodged by complainant stating that he had made an online application for converting

agricultural land into non-agricultural land and for granting the said application,

the applicant had demanded Rs.3,90,000/- considering Rs. 30/- per meter and thereby demanded Rs.3,00,000/- and was caught taking bribe of Rs.1,00,000/- during the trap and so the said FIR came to be lodged.

Submission of the Parties

4. Learned advocate Mr. Nirav Sanghvi has vehemently and fervently argued that in the present case investigation has been over and the charge-

sheet is also filed. So far as the allegations leveled in the FIR and other papers, the present applicant has been falsely implicated in the offence. He

further submitted that the applicant has been serving as Deputy Mamlatdar since years and there are no antecedents against the present applicant. He

further submitted that the applicant has family roots in the society and therefore, he is not likely to flee away from justice. That he will abide by

whatever conditions imposed by the Hon'ble Court. He has therefore, prayed that discretion may kindly be exercised and enlarge the applicant on

regular bail.

5. Per contra, learned APP Mr. LB Dabhi for the State has vehemently opposed the bail application and the argued that in the present case, the

applicant was caught red-handed asking bribe for converting the agricultural land into non-agricultural land therefore, the applicant accused has

committed serious offence of taking bribe being a Deputy Mamlatdar. He further submitted that, prima-facie case is made out against the present

applicant, therefore, discretion may not be exercised in favour of the applicant.

Merits of the Case:

6. This court has considered the following aspects:

(a) That in the present case Applicant accused has come it is an admitted fact that the for this Application after the charged sheet is filed.

(b) Further as per catena of decisions of Hon'ble Supreme Court, there are mainly 3 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.

(c) That the learned Advocate for the Applicant has submitted that the Applicant Accused is not likely to flee away.

(d) That the Applicant Accused is in custody since 23.09.2020.

(e) 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. Therefore, as per the settled principle of law, perusing the record in this Case and taking into consideration the totality of prima facie facts of the case, nature of allegation gravity of accusation and punishment prescribed for offence, availability of accused at the time of trial, etc., having no antecedent. This Court is inclined to exercise the discretion under Section 439 of the Cr. PC. Therefore, this Court is inclined to exercise discretion in favour of the applicant. The Applicant Accused- JAGDISHBHAI GOPALBHAI MAKWANA is ordered to be released on regular bail in connection with the aforesaid FIR on executing a personal bond of Rs. 20,000/- with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that he 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 his residence to the Investigating Officer and to the Trial Court at the time of executing the bond and shall not change his residence without prior permission of the trial Court.

(d) provide his 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 his 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, to the Trial Court within a week. If he does not possess passport, he shall file an Affidavit to that effect.

(h) shall mark presence before the concerned police station on 1st of every English Calender month between 11:00 am and 02:00 pm, for a period of one year or till the trial is concluded, which ever is earlier.

(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.

8. Bail bond 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.

9. 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 will release the Applicant forthwith only if he is not required in connection with any other offence for the time being.

10. Before parting with, it is made clear that the observations made in this order is for bail purpose only and neither trial Court at trail nor any competent authority shall be influenced by the observations made in this order.

11 . Rule is made absolute accordingly. Direct service thorough e-mail/fax or any other electronic mode is permitted. Registry shall communicate this order by fax / e-mail to the concerned Court / authority.