

(2024) 03 GUJ CK 0081

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - After Chargesheet) No. 5555 Of 2024

Jagubhai Selarbhai Boricha

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 21-03-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Gujarat Land Grabbing (Prohibition) Act, 2020 — Section 4(3), 5(c)

Citation : (2024) 03 GUJ CK 0081

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Pratik Y Jasani, L B Dabhi

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. 11208044240142 of 2024 registered with the Pradyumnagar Police Station, District Rajkot for the offence punishable under Sections 4(3), 5(C) of the Gujarat Land Grabbing (Prohibition) Act, 2020.
3. Learned advocate Mr. Jasani appearing on behalf of the applicant has submitted that so called incident is occurred on 19.03.1998 and FIR is registered on 17.02.2024 after delay of more than 26 years and in connection with the same, the applicant was arrested on 17.02.2024 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 further submits that it is alleged that the applicant was the tenant of

the premises owned by the complainant, however, the applicant has illegally and unauthorizedly entered into the said premises. It is also submitted that if the Hon'ble Court would make a cursory glance upon the contents of the FIR, in that event, it would be found that the original complainant has purchased the said property in the year 1998, whereas father of the present applicant was residing in the said premises as a tenant from the year 1971 and, hence, it cannot be said that the applicant has committed alleged offences under the Land Grabbing Act. Learned advocate further submits that co-accused has been considered by this Court. Learned advocate Mr. Jasani submits that considering the role attributed to the present applicant and on the ground of principle of law of parity, the applicant may be enlarged on regular 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. He further submitted that considering the role attributed by the present applicant, the present application may not be considered.

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

6. 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 17.02.2024. The investigation is already completed and the present application is filed after submission of the charge-sheet. There is gross delay of more than 26 years in lodging the aforesaid FIR. Further prior to purchase of the property by the complainant in the year 1998, the father of the applicant was residing there since 1971. I have considered the role attributed to the present applicant at the time of commission of crime. It is also found out from the record that co-accused has been enlarged on bail by this Court. Therefore considering the above stated factual aspect and considering the role attributed by the present applicant at the time of commission crime and on the ground of principle of law of parity, I am inclined to exercise the discretion in favour of the applicant.

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 and the applicant is ordered to be released on regular bail in connection with C.R. No. 11208044240142 of 2024

registered with the Pradyumannagar 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 the concerned 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;

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. 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. The present application stands allowed accordingly. Rule made absolute to the aforesaid extent. Direct service is permitted.