

(2021) 12 GUJ CK 0015
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 18665 Of 2021

Kalpeshbhai S/O Vasudevbhai Barot

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 02-12-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(C), 20(b), 29, 37

Citation : (2021) 12 GUJ CK 0015

Hon'ble Judges : Umesh A. Trivedi, J

Bench : Single Bench

Advocate : PS Patel, C.M. Shah

Final Decision : Allowed

Judgement

Umesh A. Trivedi, J

1. Heard Mr. Amit Patel, learned advocate for Mr. P.S. Patel, learned advocate for the applicant.
2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being C.R. No.11216005210496/2021 registered with Dehgam Police Station, District: Gandhinagar for offence under Sections 8(C), 20(b), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (herein referred to as "the Act").
3. Learned advocate appearing on behalf of the applicant submits that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.
4. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.
5. Learned advocates appearing on behalf of the respective parties do not press for further reasoned order.

6. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

7. Following aspects are considered:

(i) Investigation is over and charge-sheet is filed.

(ii) The applicant accused is in custody since 16.07.2021.

(iii) The Ganja weighting 44.84 grams, which is found less than small quantity from the house of the applicant. Though, along with the scale, weights, and transparent plastic bags, possibly for the purpose of sale, the aforesaid stock must have been kept but at the same time, it is far far less than the small quantity.

(iv) Though learned APP pointed out that in the year 2010, similar offence of possessing 1.930 Kgs Ganja was found from him, he came to be acquitted into the said case by an order dated 19.10.2011. Therefore, there is a long gap between the aforesaid antecedent where he is acquitted. Considering the quantity found from the present applicant, order passed by the Coordinate Bench of this Court in respect of co-accused - wife of the present applicant as also person who was to purchase/supplied the same have come to be released on bail, the rigors of Section 37 of "the Act" would not apply.

8. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra Vs. Central Bureau of Investigation, reported in (2012) 1 SCC 40.

9. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being C.R. No.11216005210496/2021 registered with Dehgam Police Station, District: Gandhinagar on executing a personal bond of Rs.50,000/- (Rupees Fifty Thousand only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that applicant 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 India without prior permission of the concerned Trial Court;

[e] mark presence twice in a month on 1st and 15th of every english calendar to the concerned IO of the concerned Police station between 11:00 a.m. to 2:00 p.m. for a period of 6 months and thereafter he shall mark his presence once in a month on 1st of every english calendar month for a period of 1 year;

[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 prima facie observations made by this Court in the present order.

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