

(2022) 06 GUJ CK 0158
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 10659 Of 2022

Kalusinh Khumsinh

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 24-06-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

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

Citation : (2022) 06 GUJ CK 0158

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

Bench : Single Bench

Advocate : Krunal S Mehta, Swetha D Bhatt

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This Application is filed by the Applicant – Accused under Section 439 of the Code of Criminal Procedure for enlarging the applicant on Regular Bail in connection with I-C.R. No.11200011220482 of 2022 registered with Valsad Rural Police Station, District : Valsad for the offences punishable under Sections 65(a), 65(e), 81, 98(2) & 116-C of the Prohibition Act.

2. Heard learned Advocate Mr. Krunal Mehta for the Applicant and learned APP Ms. Jirga Jhaveri for the Respondent State.

3. Rule. Learned APP waives service of Rule for the Respondent State of Gujarat.

Submission of the Parties:

4. Learned Advocate for the Applicant / Accused has submitted that the Applicant Accused is innocent as he has not taken part in the offence as alleged. He has family roots in the society and therefore, he is not likely to flee away from justice. That the charge sheet is filed. That he will abide by whatever conditions imposed by the Hon'ble Court. He has further vehemently submitted that there is

no direct involvement of the Applicant Accused in the present case so far as allegation is concerned. There are no antecedents against the Applicant Accused. He has therefore prayed that discretion may kindly be exercised and grant bail to the Applicant Accused.

4. Per contra, learned APP has vehemently argued that though there is no antecedent but the Applicant has accompanied at the time of so-called commission of the offence and therefore discretion may not be exercised and ultimately he has opposed grant of bail looking to the nature and gravity of offence, involvement of the Applicant / Accused.

Merits of the Case:

5. This court has considered the following aspects:

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

(b) That even if it is a prima facie case, then also as such there is no antecedent.

(c) 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.

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

(e) That the Applicant Accused is in custody since 23.03.2022.

(f) 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.

6. Having heard the learned Advocates for the parties and perusing the record produced in this case as well as taking into consideration the facts of the case, nature of allegations, gravity of accusation, availability of the Applicant Accused at the time of Trial etc. and the role attributed to the present Applicant accused, the present Application deserves to be allowed and accordingly stands allowed. The Applicant Accused is ordered to be released on regular bail in connection with I-C.R. No.11200011220482 of 2022 registered with Valsad Rural Police Station, District : Valsad on executing a personal bond of Rs.15,000/- 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) mark presence before the concerned police station on every 1st day of English calendar month between 12: 00 Noon and 2:00 PM till one year or till the trial is concluded, whichever is earlier.

(h) 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.

7. 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.

8. 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.

9. At the trial, the concerned trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

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