

(2023) 04 GUJ CK 0041
In the Gujarat High Court
Case No : R/Criminal Appeal No. 364 Of 2023

Karabhai Punjabhai Rada

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 436, 450
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(2)(iv), 3(2)(v)

Citation : (2023) 04 GUJ CK 0041

Hon'ble Judges : Nirzar S. Desai, J

Bench : Single Bench

Advocate : Yash K Dave, Vishal K Anandjiwala, Dhawan Jayswal

Final Decision : Allowed

Judgement

Nirzar S. Desai, J

1. 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.11218010220407 of 2022 dated 25.10.2022 registered with Udhoygnagar Police Station, District: Porbandar for offences under Section 436, 450 and 114 of Indian Penal Code and under Section 3(2)(iv), 3(2)(v) of the Atrocities Act.

2. Learned Advocate Mr. Vishal K. Ananjiwala appearing on behalf of the applicants submits that considering the nature of the offence, the applicants may be enlarged on regular bail by imposing suitable conditions.

3. Learned Additional Public Prosecutor Mr. Dhawan Jayswal appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.

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

5. 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 applicants on regular bail.

6. This Court has considered following aspects:-

(a) Both the applicants are in jail since 29.10.2022;

(b) investigation is over and charge-sheet is filed;

(c) As per the say of learned advocate Mr. Vishal K. Ananjiwala the entire FIR is based upon an earlier incident and not on the basis of real facts;

(d) Though there is past antecedent in respect of accused No.1, the same is in respect of Gambling Act;

(f) Learned APP could not point out any exceptional circumstances.

In the facts and circumstances of the present case, I am inclined to consider the case of the present applicants.

7. 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.

8. Hence, the present application is allowed. The applicants are ordered to be released on regular bail in connection with FIR being C.R.No.11218010220407 of 2022 dated 25.10.2022 registered with Udhog Nagar Police Station, District: Porbandar on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand only) each with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that they 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 India without prior permission of the concerned trial court;

[e] mark presence before the concerned Police Station between 1st to 10th day of every English calendar month for a period of six months between 11:00 a.m. and 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 the concerned trial court;

The authorities shall adhere to its own Circular relating to COVID-19 and, thereafter, will release the applicants only if they are 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 Sessions Court to delete, modify and/or relax any of the above conditions, in accordance with law.

9. At the trial, the 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.