
(2008) 01 GUJ CK 0036

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 12577 of 2007

Karsan Narsibhai Vankar

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 114, 120B, 408, 409, 420

Citation : (2008) 01 GUJ CK 0036

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : N.K. Majmudar, for the Appellant; S.P. Hasurkar, Assistant Public Prosecutor for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

S.R. Brahmbhatt, J.—Rule. Shri. S. P Hasurkar, learned APP waives service of notice of rule for respondent State. Rule is fixed forthwith with the consent of learned Counsel for the parties.

2. The applicant who has been arrested in connection with C.R. No. I-161/2006 registered with Vaghodia Police Station for the alleged commission of offence punishable u/s 408 409 420 465 467 448 471 120B and 114 of IPC, has moved this Court u/s 439 of Cr.P.C. for seeking regular bail, pending trial.

3. The accused-applicant appears to have approached the concerned Sessions Court by preferring Cri. Misc. Application No. 674 of 2007 with identical prayers which came to be rejected by the Sessions Court vide order dated 05/07/2007.

4. Mr Majmudar, learned advocate appearing for the applicant has submitted that in similar cases, this Court has granted bail to other accused as they were ready and willing to deposit 50% of the amount of misappropriation. In the instant case, the applicant's liability comes to about Rs. 3,16,644/- and the applicant is on his own volition ready and willing to pay up the said amount to the

respondent State. He has submitted that out of this amount, Rs. 1 lakh be paid on behalf of the applicant even before he may be released on bail and the remaining amount of Rs. 2,16,644/- would be paid within a period of 90 days from the date of release. He has also submitted that the applicant is ready and willing to file an undertaking to this effect also before this Court with a copy to the office of the Public Prosecutor.

5. Mr S.P. Hasurkar, learned APP appearing for the respondent State has submitted that in case this Court is inclined to enlarge the applicant on bail, the same may be done by imposing appropriate terms and conditions.

6. This Court has taken into consideration the nature of evidence gathered during the charge-sheet, the FIR and the reasonings assigned by the concerned Sessions Court while rejecting the bail application of the applicant. As a result of the said exercise, this Court is of the view that the applicant has made out case for enlarging him on bail pending trial for the following reasons:

The applicant's liability as it is stated comes to Rs. 316644/- and he is ready and willing to pay up the amount to the State over a period of 90 days and out of which Rs. 1 lakh shall be paid right before being enlarged on bail.

The investigation is over and charge-sheet is filed.

There are no criminal antecedents.

7. The aforesaid observations are made only for the purpose of examining the prayer for bail pending trial. These observations are prima facie and shall have no bearing whatsoever upon the trial and the trial court shall not be influenced by it in any way and come to its own conclusion after analysing the evidence that may be led during the trial.

8. In view of the above, applicant's case for bail deserves positive consideration.

9. Accordingly the application is allowed. The applicant is ordered to be released on bail in connection with Crime Register No. I-161/2006 of Vaghodia Police Station on his executing a bond of Rs. 5,000=00(Rupees Five Thousand only), with one surety of same amount to the satisfaction of the lower Court and subject to the conditions that he shall:

(a) not take undue advantage of his liberty or abuse his liberty:

(b) not act in a manner injurious to the interest of the prosecution:

(c) maintain law and order:

(d) not leave the State of Gujarat without the prior permission of the Sessions Court concerned:

(e) furnish the address of his residence at the time of execution of the bond and shall not change the residence without prior permission of this Court:

- (f) surrender his passport, if any, to the lower Court within a week.
 - (g) mark his presence before the concerned police station on the 15th of every English calendar month between 9.00 am and 5.00 pm;
 - (h) the amount of Rs. 1 lakh be deposited on behalf of the applicant with the state and appropriate receipt be obtained which may be produced at the time of bail before the Sessions Court,
 - (i) pay the remaining amount of Rs. 216644/- within a period of 90 days from the date of his release and any violation thereof would amount to ending of bail and the I.O shall be at liberty to move appropriate application for appropriate orders.
 - (j) file an undertaking stating all the details of payment as mentioned above before the concerned Sessions Court with a copy to the office of the Public Prosecutor within a week from the date of his release;
 - (k) the payment of the said amount shall be subject to the final outcome of the trial and incase the applicant is found guilty, the said amount shall stand forfeited to the State exchequer.
10. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or to take appropriate action in the matter.
11. Bail before the lower Court having jurisdiction to try the case.
12. Rule is made absolute. Direct Service permitted.