

(2024) 03 GUJ CK 0036
In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - After Chargesheet) No. 17067 Of 2023

Kaushar Imran @ Ima Malik Abdul Shaikh

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 12-03-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(c), 22(c), 29, 37

Citation : (2024) 03 GUJ CK 0036

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Soeb R. Bhoharia, Valimohammed Pathan, Monali Bhatt

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the FIR being C.R. No.11210046221329 of 2022 registered with the Puna Police Station, Surat City of the offence punishable under Sections 8(c), 22(c) and 29 of the NDPS Act.

2. Learned advocate Mr. Soeb R. Bhoharia appearing for the applicant has submitted that the applicant-accused was arrested on 05.10.2022 and since then he is in jail. Learned advocate Mr. Bhoharia has also submitted that the investigation has already been completed and charge-sheet has also been filed. It is moreso submitted that on the basis of the tip-off received by the police, they have intercepted one vehicle from where total 1.670 kg Mephedrone worth Rs.1,67,00,000/- was found from the conscious possession of the accused No.1, namely, Afzal @ Guru. Thereafter, during the course of investigation, it was revealed that the said contraband substance was given to him by the co-accused Ballu from Bombay. Names of other persons have also come on record during such investigation. Learned advocate Mr. Bhoharia further submits that the

present applicant-accused is a lady and has been implicated in the present offence on the basis of the statement made by the co-accused. It is also submitted that the applicant-accused was not found available at the place of occurrence and she was not caught red-handed along with the contraband article. Even there is no recovery or discovery at the instance of the applicant-accused. It is moreso submitted that there is no recovery or discovery at the instance of the applicant-accused. Learned advocate Mr. Bhocharia would further submit that the only role attributed to the present applicant-accused is that she was in touch with the other co-accused. It is also submitted that charge-sheet has been filed against total eight accused persons, out of which, four have already been arrested and other four persons are yet to be arrested. The applicant-accused happens to be the mother of the co-accused, namely, Ballu from whom the contraband substance is alleged to have been purchased and the only role attributed to her is that she was regularly talking with Ballu and other co-accused and except that, no other incriminating material is produced against the applicant-accused along with the charge-sheet papers. Learned advocate Mr. Bhocharia has further submitted that at the time of opposing the bail application, the investigator has filed an affidavit citing one antecedent against the applicant-accused, however, in that offence, the applicant-accused has already been acquitted. Under the circumstances, learned advocate Mr. Bhocharia prays that the applicant may be enlarged on bail on any suitable terms and conditions.

3. The learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. Learned APP has submitted that on the basis of the specific inputs received by the police, one vehicle was intercepted by them from where the accused No.1, namely Afzal @ Guru was caught red-handed along with the contraband substance weighing 1.670 kg worth Rs.1,67,00,000/-. It is moreso submitted during the course of interrogation of the said accused, it was revealed that he purchased the said contraband substance from one Sarfatkhan @ Ballu and the said accused happens to be the son of the applicant-accused and both were residing together under one roof. Learned APP has further submitted that while the present applicant-accused was in jail in another offence of NDPS, she came in contact with the other members of cartel and with the help of the co-accused Angela, a Nigerian lady, the applicant-accused started doing such an illegal activity of drugs trafficking. The said Angela has yet not been arrested. It is also submitted that the statement of the person from one Angadiya firm has also been recorded wherein he has very specifically stated that they have received an amount of Rs.10 Lakh from Surat which has been handed over to the applicant-accused. Learned APP has further submitted that the applicant-accused has also been identified in the Test Identification Parade. It is moreso submitted that in fact the applicant-accused was in constant touch with the other co-accused persons which is evident from the CDR collected by the Investigating Officer. It is moreso submitted that in past also, the applicant-accused was arrested in connection with one NDPS offence for which she remained in jail for four years, however,

ultimately at the end of trial, she has been acquitted in the said offence, but the said fact indicates that she has been indulged in such an illegal activity since long. Moreover, the contraband substance recovered in the present case is more than a commercial quantity and, therefore, rigors of Section 37 would also come into play. Therefore, considering the role attributed to the applicant-accused, this is a fit case wherein discretionary power of this Court is not required to be exercised in favour of the applicant-accused.

4. The learned advocates appearing on behalf of the respective parties do not press for further reasoned order.

5. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers of the investigation and considered the allegations levelled against the applicant and the role played by the applicant. This Court has also considered the following aspects;

a) That the investigation has already been completed and charge-sheet has also been filed;

b) That there is no recovery or discovery at the instance of the applicant-accused;

c) That the applicant-accused is a lady accused languishing in jail since 05.10.2022, i.e, for almost one and a half year and, therefore, considering the period of incarceration already undergone by the applicant-accused, I am of the view that the present application deserves consideration;

d) That the name of the applicant-accused has not been mentioned in the FIR and she has been implicated in the present offence on the basis of the statement of the co-accused;

e) That the applicant-accused was not found available at the place of offence and the contraband substance was not recovered from the conscious possession of the applicant-accused;

f) That in the offence registered against the applicant-accused in the past, she has already been acquitted by the trial court;

6. 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.

7. 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.

8. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.11210046221329 of 2022 registered with the Puna Police Station, Surat City, 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. 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 this Court;

9. 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.

10. 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. Rule is made absolute to the aforesaid extent.

Direct service is permitted.