

(2024) 01 GUJ CK 0086

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - Before Chargesheet)
No. 1116 Of 2024

Mahendrasinh Ratubha Jethwa

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 18-01-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Citation : (2024) 01 GUJ CK 0086

Hon'ble Judges : M. R. Mengdey, J

Bench : Single Bench

Advocate : Yash K Dave, Shruti Pathak, Vishal K Anandjiwala

Final Decision : Allowed

Judgement

M. R. Mengdey, J

1. The Applicant has filed this Application under Section 439 of the Code of Criminal Procedure for enlarging the Applicant on Regular Bail in connection with FIR being C.R. No. 11185004231732/2023 registered with Jamkhambhaliya Police Station, Devbhumi Dwarka.

2. Heard learned Advocate for the Applicant and learned APP for the Respondent – State.

Rule. Learned APP waives service of notice of Rule on behalf of the Respondent - State.

3. Learned Advocate for the Applicant has submitted that the Applicant has good reputation in the society and no useful purpose would be served by keeping the applicant in jail for indefinite period. It is further contended that the applicant is ready and willing to abide by all the conditions that may be imposed by this Court if released on bail.

4. Per contra, learned APP has vehemently opposed the present application for

grant of regular bail inter alia contending that the Applicant is very much involved in hatching the conspiracy for committing the offence in question and he had also signed the sale deed as a witness and had wrongly identified Kantilal Prabhashankar Umashankar Joshi who had expired earlier and also threatened the first informant prior to the registration of the FIR. Thus there is an active participation of the Applicant in commission of the offence in question. She has further submitted that the investigation is still in progress. Learned APP has therefore submitted that looking to the nature of offence, this Court may not exercise the discretion in favour of the applicant and the Application may be dismissed.

5. Heard learned Advocates for the parties and perused the record. As per the case of the prosecution, the role attributed to the Applicant is to the effect that he has signed the sale deed in his capacity as a witness and had identified the executor of the sale deed Kantilal Prabhashankar Umashankar Joshi though he had expired much prior to the execution of the sale deed. The record further indicates that the Applicant had signed the sale deed and had introduced the present Applicant to the coaccused as Kantilal Prabhashankar Umashankar Joshi and therefore the Applicant had identified him in the sale deed. Considering the aforesaid aspects, the Application deserves consideration. This court has also considered the following aspects:

(a) 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.

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

(c) That the Applicant is in custody since 25.12.2023.

(d) 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.

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. This Court has also gone through the FIR and police papers and also the earlier order passed by the learned Sessions Court where the learned Sessions Judge has disallowed the bail Application at initial stage. The Applicant Accused is ordered to be released on bail in connection with the aforesaid FIR on executing a personal bond of Rs.10,000/- 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 residence to the Investigating Officer and to the Trial Court at the time of executing the bond and shall not change the residence without prior permission of the trial Court.

(d) provide 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) surrender passport, if any, to the Trial Court within a week. If the Applicant does not possess passport, 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 the Applicant 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. Direct service permitted.