

**(2024) 04 GUJ CK 0050**

**In the Gujarat High Court**

**Case No :** R/Criminal Misc.Application (For Successive Regular Bail - After Chargesheet) No. 5921 Of 2024

Manharbhai Bhuljibhai Gamit

APPELLANT

Vs

State Of Gujarat

RESPONDENT

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**Date of Decision :** 15-04-2024

**Acts Referred:**

Indian Penal Code, 1860 — Section 279, 304, 308, 337, 338  
Motor Vehicles Act, 1988 — Section 177, 184

**Citation :** (2024) 04 GUJ CK 0050

**Hon'ble Judges :** Divyesh A. Joshi, J

**Bench :** Single Bench

**Advocate :** Deepak A Bagul, Rajendra D Jadhav, Hardik Soni

**Final Decision :** Allowed

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## **Judgement**

Divyesh A. Joshi, J

1. Rule returnable forthwith. Learned APP waives service of notice of rule for and on behalf of the respondent-State.

2. 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.11210021231247 of 2023 registered with the Katargam Police Station, Surat of the offence punishable under Sections 304, 308, 279, 337 and 338 of the IPC and Sections 184 and 177 of the Motor Vehicles Act.

3. Learned advocate appearing for the applicant has submitted that the applicant-accused was arrested on 24.12.2023 and since then he is in jail. Learned advocate for the applicant has also submitted that the investigation has already been completed and charge-sheet has also been filed. Learned advocate for the applicant has submitted that the applicant-accused was working as the driver in the Surat Municipal Corporation and was driving the bus of the municipality. It is submitted that on the date of the unfortunate incident, there was a sudden

attack of epilepsy to the applicant, due to which, the applicant became unconscious and lost control over the bus. He was not driving the bus negligently nor was there any ill-intention on the part of the applicant-accused of causing any harm or injury to any layman. Learned advocate for the applicant has further submitted that the wife of the applicant-accused has also filed an undertaking to the effect that henceforth, the applicant-accused will never do any kind of driving job, which reads thus;

"I, Madhuben W/o. Manharbhai Bhuljibhai Gamit, Hindu, Female, aged 38 years, Occupation: housewife, Residing at Mukhadi Faliyu, Segupada, Tokarva, Sub District: Songadh, District: Tapi, State-Gujarat-394365 on oath as under:-

1. That the undersigned is the wife of the petitioner accused Manharbhai Bhuljibhai Gamit, who has been arrested in connection with FIR being C.R. No.11210021231247 of 2023 dated 23.12.2023, registered with Katargam Police Station, Surat for the offences punishable under Sections 304, 308, 279, 337 and 338 of Indian Penal Code and under Sections 184 and 177 of the Motor Vehicles Act.

2. That this Hon'ble Court has been pleased to direct the petitioner to file an undertaking to the effect that the petitioner will not engage himself in the Job of Driving.

3. That the undersigned being wife of the petitioner files this undertaking before this Hon'ble Court as the petitioner is in jail since 24.12.2023 and hence, I hereby undertake to ensure that the petitioner would not engage himself in the job of Driver in Future.

4. The petitioner states and submit that petitioner makes the statement of not doing job of driver in future without admitting the guilt and the same would not prejudice his rights and contention before the Learned Trial Court during Trial.

The undersigned therefore, states and submits that the petitioner will abide and comply the statement and undertaking made before this Hon'ble Court.

Solemnly affirm on this 13th day of April, 2024."

4. Learned advocate for the applicant has also submitted that the applicant-accused shall also file an undertaking to the same effect before the trial court within a period of one week from the date of his actual release. Under the circumstances, learned advocate for the applicant prays that the applicant may be enlarged on bail on any suitable terms and conditions.

5. 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 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.

6. The learned advocates appearing on behalf of the respective parties do not

press for further reasoned order.

7. 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 the applicant-accused is in jail since 24.12.2023;

c) That the wife of the applicant-accused has also filed an undertaking on behalf of the applicant-accused stating that the applicant-accused will never do any kind of driving job and is also ready and will to file an undertaking to the same effect before the trial court within a period of one week from the date of his actual release;

8. 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.

9. 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.

10. 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.11210021231247 of 2023 registered with the Katargam Police Station, Surat, 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;

11. 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.

12. 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.

13. 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.