

(2021) 08 GUJ CK 0030
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 13888 Of 2021

Mirkhan Yakub Maman

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 10-08-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 295A, 429
Gujarat Animal Preservation Act, 1954 — Section 5(1), 1, 6(B)(1), 8(2), 8(4)
Prevention Of Cruelty To Animals Act, 1960 — Section 11(1)(L)

Citation : (2021) 08 GUJ CK 0030

Hon'ble Judges : S.H.Vora, J

Bench : Single Bench

Advocate : Aftabhusen Ansari, Moxa Thakkar

Final Decision : Allowed

Judgement

S.H.Vora, J

1. Learned Advocate for the applicant seeks permission to withdraw the present application qua applicant No.1-Mirkhan Yakub Maman with a

permission to move a fresh bail application before the learned competent Court after filing of the charge-sheet. Permission, as prayed for, is granted.

Application stands disposed of as withdrawn as requested qua applicant No.1-Mirkhan Yakub Maman with liberty afore-stated. It is clarified that this

Court has not examined the merits of the case qua applicant No.1.

1. Rule. Learned APP waives service of notice of Rule on behalf of respondent-State.

2. Heard learned advocate, for the applicants and learned APP, for the respondent-State through V.C.

3. This application is filed under Section 439 of the Code of Criminal Procedure for regular bail in connection with F.I.R. registered at C.R.

No.11993006210413 of 2021 with A- Division Gandhidham Police Station, for the offences punishable under Sections 295A, 429 and 114 of IPC and

under Sections 5(1),1, 6(B)(1), 8(4) and 8(2) of the Gujarat Animal Preservation Act, 1954 and under Sections 11(1)(L) of the Prevention of Cruelty to Animals Act.

4. Heard and examined the papers placed for consideration in support of the submission made at bar.

5. Upon hearing submission, following picture emerges on record :-

(i) Substantial investigation is over and applicant No.2 is not found at the scene of offence or is owner of the vehicle from-where the muddamal is found.

(ii) Learned Advocate for the applicants states at bar that no past antecedent is registered qua the applicant No.2.

(iii) The offences alleged against the applicant No.2 are triable by Magisterial Court and considering the pendency before the concerned Magisterial

Court, there is no likelihood of commencement and conclusion of trial within near future and therefore, refusal of bail will amount to pre-trial

conviction, which is prohibited by law.

(iv) The applicant No.2 has deep root in the society, no apprehension as to flee away or escape trial or tempering with the evidence /witnesses is expressed.

(v) In view of above position emerging at the end of hearing, the application deserves consideration, but by imposing suitable condition to be observed

by the applicant No.2, pending investigation and trial.

6. Hence, the application is allowed qua applicant No.2 â?" Nadeem Alimamad Mokha and the applicant No.2 â?" Nadeem Alimamad Mokha is

ordered to be released on bail in connection with C.R. No.11993006210413 of 2021 with A-Division Gandhidham Police Station, on executing a bond

of Rs.10,000/-(Rupees Ten Thousand only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that

the applicant No.2 â?" Nadeem Alimamad Mokha 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] not leave the territory of India without prior permission of the Sessions Judge concerned;

[d] appear before the Investigation Officer concerned, as and when required for investigation purpose and attend the Court concerned regularly.

[e] furnish the present address of residence along with the proof to the I.O. concerned and also to the Court at the time of execution of the bond and

shall not change the residence without prior permission of Sessions Court concerned;

7. The competent authority will release the applicant only if the applicant No.2 â?" Nadeem Alimamad Mokha 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 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 Court to

delete, modify and/or relax any of the above conditions in accordance with law. 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 No.2 â?" Nadeem Alimamad Mokha on bail.

8. Rule made absolute to the aforesaid extent.

Direct service is permitted.