

(2024) 01 GUJ CK 0007

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 12039 Of 2023 (For Regular Bail -
After Chargesheet)

Mohammad Zakariya Gulam Kapadiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 01-01-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 120(B), 409, 420

Citation : (2024) 01 GUJ CK 0007

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Devanshi P Malkan, Zamir Z Shaikh, JK Shah

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. Rule. Learned APP waives service of notice of rule for respondent – State of Gujarat.

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.11210055230219/2023 registered with the Salabatpura Police Station, Surat for the offence punishable under Sections 409, 420 and 120(B) of the Indian Penal Code.

3. Learned advocate for the applicant submitted that now the investigation is completed and after submission of the chargesheet, the present application is preferred and the applicant is in jail since 25.03.2023. Learned advocate, at the outset, submitted that the applicant is ready and willing to deposit an amount of Rs.40,00,000/- before the concerned court without prejudice to his rights and contentions and as the applicant is in jail, the daughter of the applicant has also filed an affidavit to the effect that the flat owned by them will be sold out and on

receipt of sale consideration, the aforesaid amount will be deposited before the concerned court. Learned advocate submitted that after the release of the applicant, the applicant will also file an undertaking immediately to the effect that he will deposit an amount of Rs.40,00,000/- and abide by the said undertaking. It is, therefore, urged that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

4. Learned APP for the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.

5. Learned advocates appearing on behalf of the respective parties do not press for further reasoned order.

6. 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.

7. It is found out from the record that the present application is preferred after submission of the chargesheet and now the investigation is completed and the applicant is in jail since 25.03.2023. Over and above that, all the offences are exclusively triable by the Court of Magistrate. Further as stated by learned advocate for the applicant, the applicant is ready and willing to deposit an amount of Rs.40,00,000/- before the concerned court without prejudice to his rights and contentions as stated by the daughter of the applicant by filing affidavit. Therefore considering the above factual aspects and without going into the merits of the case, the present application deserves to be allowed.

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 as well as in case of Satender Kumar Antil v. Central Bureau of Investigation & Anr. reported in (2022) 10 SCC 51.

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. The applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.11210055230219/2023 registered with the Salabatpura 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;

[g] shall file an undertaking immediately after his release from the jail to the effect that the flat owned by them will be sold out and on receipt of sale consideration, an amount of Rs.40,00,000/- will be deposited before the concerned trial court and shall abide by the undertaking filed by him after his release and the aforesaid exercise will be completed within three months from the date of release of the applicant including deposit of the aforesaid amount;

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 concerned Sessions Judge concerned will be free to issue warrant or 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.

12. 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.

13. Rule is made absolute to the aforesaid extent. Direct service is permitted.