

(2022) 01 GUJ CK 0067
In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 19093 Of 2021

Mohit Sureshbhai Tadvi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 10-01-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(C), 20(b), 29, 37

Citation : (2022) 01 GUJ CK 0067

Hon'ble Judges : Dr.Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : VO Joshi, CM Shah

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This application is filed by the applicant â?" accused under Section 439 of the Code of Criminal Procedure for enlarging the applicant on Regular

Bail in connection with C. R. No. 11196017210603 of 2021 registered with Panigate Police Station, District: Vadodara City for the offences

punishable under Sections 8(C), 20(b), and 29 of the Narcotics Control and Psychotropic Substances Act, 1985 (NDPS Act).

2. Heard learned advocate Mr. V. O. Joshi for the applicant and learned APP Ms. C. M. Shah for the respondent - State.

Submissions of the Parties:

3. The learned advocate for the applicant - accused has submitted that the applicant - accused is an innocent person and falsely implicated in the

offence in question. It is submitted that in the present case, the applicant is charged with the aforesaid offences, however, the ingredients of the said

offence are not satisfied. It is submitted that even other wise, the quantity of the contraband article which was seized was intermediate quantity that is to say, less than the commercial quantity. Further, the investigation is over and charge sheet in the case is already filed and hence, there is no question of tampering and hampering with the evidence. Moreover, the applicant has no antecedents.

3.1 It is submitted that the applicant has family roots in the society and therefore, the applicant is not likely to flee away from justice. That the applicant will abide by whatever conditions imposed by the Court. The learned advocate for the applicant has further submitted that there is no direct involvement of the applicant - accused in the present case so far as allegation is concerned. It is, therefore, prayed that discretion may kindly be exercised and the applicant may be enlarged on regular bail.

4. Per contra, learned APP has vehemently argued that from the charge sheet papers, prima facie case is made out against the present applicant.

Accordingly, looking to the nature and gravity of offence, role attributed and the involvement of the applicant - accused, the learned APP has urged

that discretion vested in the Court may not be exercised and she has requested to reject this application.

Merits of the Case:

5. This court has considered the following aspects:

(a) the investigation is over and charge sheet is filed;

(b) the applicant has no antecedents;

(c) alleged quantity is intermediate and not the commercial one and hence, the rigour of Section 37 of NDPS Act is not applicable;

(d) further as per the catena of decisions of Hon'ble Apex Court, there are mainly three 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;

(e) that the learned advocate for the applicant has submitted that the applicant - accused is not likely to flee away;

(f) that the applicant - accused is in custody since 03.06.2021;

(g) 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, wherein it is held that bail is a

rule and jail is an exception and there should not be pre-trial punishment.

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 and the fact that the applicant has no antecedents, the present application deserves to be allowed and accordingly stands

allowed. The applicant is ordered to be released on regular bail in connection with above-referred FIR, on executing a personal bond of Rs.50,000/-

(Rupees Fifty Thousand only) with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that the

applicant 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 his residence to the Investigating Officer and to the trial Court at the

time of executing the bond and shall not change his residence without prior permission of the trial Court;

(d) provide his 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, before the trial Court within a week. If he does not possess passport, he shall file an affidavit to that effect;

(h) mark presence before the concerned police station once in a month between 11:00 a.m. and 2:00 p.m. for a period of one year or till the trial is

over, whichever is earlier;

(i) shall maintain all the rules and regulations framed by the Municipality

regarding contemporary status of corona virus/Covid-19, State Government or by any competent authority, including social distancing.

6.1 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.

6.2 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 shall release the applicant forthwith only if the applicant is not required in connection with any other offence for the time being.

6.3 At the trial, the concerned trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

7. Rule is made absolute accordingly. Direct service is permitted.