

(2023) 07 GUJ CK 0003

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9468 Of 2023

Mukeshbhai Nanubhai Rathwa

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 01-07-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Gujarat Prohibition Act, 1949 — Section 65A, 65(e), 81, 83, 98(2), 116B??Code Of
Criminal Procedure, 1973 — Section 439
Gujarat Prohibition Act, 1949 — Section 65A, 65(e), 81, 83, 98(2), 116B

Citation : (2023) 07 GUJ CK 0003

Hon'ble Judges : Nirzar S. Desai, J

Bench : Single Bench

Advocate : K B Maghnani, Manan Mehta

Final Decision : Allowed

Judgement

Nirzar S. Desai, J

1. Heard learned advocate Mr. Maghnani appearing for the applicant and learned Additional Public Prosecutor Mr. Manan Mehta for the respondent – State.

2. By this application filed under Section 439 of the Code of Criminal Procedure, 1973, the applicant is seeking release on regular bail in connection with the FIR being C.R.No.11184001221574 of 2022 registered with Bodeli Police Station, District Chhotaudepur punishable under Sections 65A, 65(e), 116-B, 81, 83, 98(2) of the Prohibition Act.

3. Learned advocate for the applicant submitted that, the applicant is not involved in commission of offence as alleged in the FIR and therefore, looking to the role of the applicant and nature of the allegations, the applicant is required to be enlarged on regular bail by imposing suitable terms and conditions.

4. On the other hand, learned APP appearing for the respondent – State vehemently submits that, the offences which have been charged are serious in

nature affecting the society at large and looking to the facts as well as the allegations made against the applicant, no discretion would be required to be exercised.

5. In the facts and circumstances of the case and considering the nature of allegations, this Court is of the opinion that, discretion is required to be exercised to enlarge the applicant on regular bail. This Court has considered the following facts while exercising discretion in favour of the applicant :-

(i) the applicant is in jail since 21.12.2022;

(ii) the investigation is over and the charge-sheet is filed;

(iii) Co-accused namely Rathva Mukeshbhai Gohtabhai vide Cr.M.a. No. 314 of 2022, Bhaveshbhai Chandrakant Rajput vide Cr.M.A. No. 325 of 2022, and Rathva Maheshbhai Huniyabhai vide Cr.M.A. No. 313 of 2022 have already been enlarged on anticipatory bail by the learned Additional District and Sessions Judge, Bodeli, and those co-accused persons are having similar and graver role than the present applicant, the present applicant is required to be enlarged on regular bail;

(v) In view of 11 antecedents of the present applicant, the same can be taken care of by imposing suitable conditions. In the facts and circumstances of the present case, I am inclined to consider the case of the present applicants.

6. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra Vs. Central Bureau of Investigation, reported in [2012] 1 SCC 40.

7. In view of the aforesaid facts, without discussing the evidence in detail, this Court, prima facie, is of the opinion that, this is a fit case to exercise the discretion and enlarge the applicant on regular bail. Hence, present application is allowed and the applicant is ordered to be released on regular bail in connection with the FIR being C.R.No. 11184001221574 of 2022 registered with Bodeli Police Station, District Chhotaudepur on executing personal bond of Rs.10,000/- (Rupees Ten thousand only) with one surety of the like amount to the satisfaction of the learned 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] shall not leave Chhotaudepur till the trial is over;

[e] furnish latest 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 the trial Court;

[f] mark presence before the concerned Police Station between 1st to 10th day

of every English calendar month for a period of six months between 11:00 a.m. and 2:00 p.m.;;

8. The Authorities will release the applicant only if the applicant 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. Bail bond to be executed before the learned 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, learned 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.

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