

(2020) 10 GUJ CK 0034

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 15804 Of 2020

Nirav Prafulbhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 28-10-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 406, 409, 420, 504, 506(2)
Negotiable Instruments Act, 1881 — Section 138

Citation : (2020) 10 GUJ CK 0034

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : P P Majmudar, Suraj B Matieda, Pranav Trivedi

Final Decision : Allowed

Judgement

Gita Gopi, J

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

2. This application has been filed under section 439 of the Code of Criminal Procedure for regular bail in connection with the FIR No.11210002201869 of 2020 registered with Sachin GIDC Police Station, District Surat for offences punishable under sections 406, 409, 420, 504, 506(2), 120-B and 34 of IPC.

3. Mr. P.P. Majmudar, learned advocate for the applicant, submitted that the present applicant - accused has not received any yarns prior to all the misdeed by accused no.1 and his wife - accused no.2, who has been granted anticipatory bail. Mr. Majmudar, submitted that prior to this complaint, the applicant has given a complaint on 22.08.2020 and he has also given a detailed reply to the notice under Section 138 of the Negotiable Instruments Act. The four cheques were under stop payment instruction of the present applicant. He submitted that in the present complaint there are material suppression of facts regarding the

reply, legal notice under Section 138 of the N.I. Act and complaint. Mr. Majmudar further submitted that at the most it could be a commercial transaction and the applicant has very categorically denied the receipt of yarns. He submits that the case of the applicant is that accused no.1 has misused the identities and the applicant's name and the accused no.1 cheated the complainant. He further submitted that no credit has been taken on GST in this transaction. It was, therefore, prayed that the present application may be allowed and the applicant herein may also be released on regular bail.

4. Mr. Pranav Trivedi, learned Additional Public Prosecutor assisted by Mr. Virat Popat, learned advocate for original complainant, relying on the police report submitted that both the accused have duped the complainant. The intention was to cheat from very beginning. The stop payment instruction was issued by the applicant with the intention to cheat the complainant. He also submitted that 38 e-payment messages were sent to the applicant, which substantiate his knowledge to the transaction and therefore he cannot claim ignorance of the transactions, as stated by the complainant. It was, therefore, prayed that no discretion may be exercised in favour of the applicant.

5. Heard learned advocates on both the sides and perused the material on record. It appears that there are allegations and counter allegations made by the parties. The notice under Section 138 of the Negotiable Instruments Act was issued and the same has been replied by the applicant and applicant has given a complaint against Himanshu Shah. All those facts could be examined during the trial. Hence, considering the facts and circumstances of the case, this Court finds this to be a fit case where discretion could be exercised in favour of the applicant.

6. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR No.11210002201869 of 2020 registered with Sachin GIDC Police Station, District 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 India without prior permission of the concerned trial court;

[e] 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 the concerned trial court;

7. The authorities shall adhere to its own Circular relating to COVID-19 and, thereafter, 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. Bail bond to be executed before the lower Court having jurisdiction to try the case.

8. Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.