

(2024) 03 GUJ CK 0013

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 3512 Of 2022 (For Regular Bail - After Chargesheet)

Nirmalbhai Navinbhai Gamit

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 04-03-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 34, 406, 417, 420

Gujarat Protection Of Interest Of Depositors (In Financial Establishments) Act, 2003 — Section 3

Citation : (2024) 03 GUJ CK 0013

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Kunal S Shah, Karna Dhomse, RB Raval

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.11824001201536/2020 registered with the Vyara Police Station, Tapi for the offence punishable under Sections 406, 417, 420 and 34 of the Indian Penal Code and under Section 3 of the GPID Act.

3. Learned advocate for the applicant submitted that the so-called incident has taken place for the period between 15.12.2012 to 21.12.2016, for which, the FIR has been lodged on 11.11.2020 and the applicant has been arrested in connection with the same on 23.08.2021 and since then, he is in judicial custody. Learned advocate submitted that now the investigation is completed and after

submission of the chargesheet, the present application is preferred. Learned advocate submitted that as per the case of the prosecution, so-called incident has occurred lastly on 21.12.2016 and FIR is lodged on 11.11.2020 and thus, there is gross delay of more than four years in registering the FIR. Learned advocate submitted that in fact, one another FIR has been registered against the applicant at Surat, wherein the complainant of the said FIR is already shown as Witness No.36 in the chargesheet of present FIR, however in connection with the said FIR, the applicant is already bailed out. Learned advocate submitted that the prosecuting agency has put reliance upon the said set of documents at the time of registration of the present FIR and if this Court would make a cursory glance upon the contents of the said FIR, in that event, the basic grounds for registration of the FIR mentioned in the complaint clearly goes on to show that based upon set of evidence and documents, two different FIRs have been registered by two different entities and thus principle of double jeopardy would squarely be applicable in the present case. Learned advocate submitted that entire case of the prosecution is based upon documentary evidence and all those documents had already been collected by the IO and, hence, there are no chances that the applicant will tamper with the evidence and hamper with the witnesses. Learned advocate submitted that huge volume of record is there and number of witnesses have been cited in the chargesheet papers and it would take considerable long period of time to conclude the trial. Learned advocate further submitted that this Court had called for the report from the concerned trial court as regards the status of the trial, from which, it can be found out that yet the charges have not been framed and the applicant is in jail since last more than two and half years and if at the end day after conclusion of the trial, if the applicant is convicted, in that event, maximum punishment which can be imposed, is of seven years. It is, therefore, urged that considering the nature of the offence as also considering the period of incarceration spent by the applicant, 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. It is submitted that the role of the present applicant is clearly spelt out from the papers of the chargesheet. It is submitted that incarceration period cannot be a ground to consider the bail application and, hence, the present application may not be entertained.

5. Learned advocate appearing for the original complainant has also objected the present application and submitted that system well designed plan was organized by the applicant by floating a scheme, wherein, innocent and gullible persons have been targeted by luring and offering attracting scheme and thereby, the applicant has siphoned off huge amount in crores of innocent persons and after pocketing entire amount, they have not paid single penny to them. Therefore considering the above facts of the case, the present application may not be entertained.

6. Learned advocates appearing on behalf of the respective parties do not press

for further reasoned order.

7. 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. 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 23.08.2021 and there is gross delay of more than four years in registering the aforesaid FIR. I have considered the role attributed to the present applicant at the time of commission of crime. It is found out that two different FIRs are registered having identical allegations, out of which, in connection with other FIR, the applicant has been considered for bail. Further, entire case of the prosecution hinges upon documentary evidence and all the documents have already been collected by the IO. Therefore considering the above factual aspects and also considering the period of incarceration spent by the applicant, 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.11824001201536/2020 registered with the Vyara Police Station, Tapi 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;

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.