

(2021) 03 GUJ CK 0104
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 19249 Of 2020

Pankajsinh Bahadursinh Zala

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 25-03-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 409

Citation : (2021) 03 GUJ CK 0104

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : Tanmay B Karia, Amar N Bhatt, Nisha Thakore

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being I-CR No.153 of 2019 registered with Jamnagar City "B" Division Police Station, Jamnagar for offence under Sections 409 and 114 of the Indian Penal Code.

2. Learned Advocate appearing on behalf of the applicant submits that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

3. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.

4. Learned advocate Mr. Amar Bhatt appearing for the original complainant-bank opposes the grant of bail as the post of the applicant is that of Head Cashier, which is a trusted post to handle the cash on behalf of the bank.

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. Following aspects are considered:-

I. The FIR is registered on 06.09.2019 for the offence which is alleged to have taken place between 01.12.2018 to 11.01.2019.

II. The applicant is in jail since 16.06.2020.

III. The investigation is concluded and charge-sheet is filed.

IV. It is a case where the applicant is a Head Cashier in the bank was over a period of time misappropriated the amount which ultimately went into the tune of Rs.17,53,000/-.

V. Submission of learned advocate for the applicant that the applicant was merely used by co-accused who is now enlarged on regular bail and hence, by applying the principle of parity.

VI. Learned advocate for the applicant, under the instructions, states that without prejudice and to show his bonafide, the applicant is ready and willing to deposit an amount of Rs.7,50,000/- within stipulated time and he will file an undertaking to that effect. At this stage, learned advocate for the complainant-bank states that the amount so deposited may be made available to the bank so as to put the money in circulation.

VII. Learned APP under instructions of IO is unable to bring on record any special circumstances against the applicant.

7. 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.

8. 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.

9. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being I-CR No.153 of 2019 registered with Jamnagar City "B" Division Police Station, Jamnagar, on executing a personal bond of Rs.10,000/- (Rupees Ten 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 & shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;

(c) surrender passport, if any, to the Trial Court within a week;

(d) not leave the State of Gujarat without prior permission of the Trial Court concerned;

(e) mark presence before the concerned Police Station once in a month for a period of six months between 11.00 a.m. and 2.00 p.m.;

(f) furnish the present address of his 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 Trial Court;

(g) to deposit an amount of Rs.7,50,000/- with the trial Court within a period of four months from the date of his actual release.

(h) to file an undertaking before the trial Court with regards to deposit of amount within one week of his release.

(i) It is open for the complainant-bank to move an application before the trial Court for receiving the money so deposited by the applicant and it is stated under the instructions that the applicant shall not object to such application.

10. 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 Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter.

11. 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.