

(2024) 04 GUJ CK 0086

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Successive Regular Bail - After Chargesheet) No. 6522 Of 2024D

Pratik Navinbhai Brahmbhatt

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 23-04-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(C), 22(c), 29

Citation : (2024) 04 GUJ CK 0086

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Kishan H Daiya, Dhawan M Jayswal

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. Rule returnable forthwith. Learned APP waives service of notice of rule for and on behalf of the respondent-State.

2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being C.R. No.11210015200082 of 2020 registered with the D.C.B. Police Station, Surat City for the offence punishable under Sections-8(C), 22(c), and 29 of The Narcotic Drugs and Psychotropic Substances Act.

3. Learned advocate appearing on behalf of the applicant submits that the present application is preferred after submission of charge-sheet. Learned advocate for the applicant has also submitted that the investigation has already been completed and charge-sheet has also been filed. Learned advocate submitted that the so-called incident has taken place on 22.09.2020, for which the FIR has been lodged on the same date i.e. on 22.09.2020 against the two accused persons and the name of the present applicant-accused is not mentioned

in the FIR. Thereafter, during the course of investigation, on the basis of statement made by the co-accused, the applicant – accused has been arraigned, arrested and chargesheeted. Learned advocate further submits that initially, the FIR is filed against two accused persons, but at the time of submission of chargesheet, the Investigating Officer has filed charge-sheet against total 19 accused persons and out of those persons, 04 accused persons have already been enlarged on bail. Learned advocate further submits that there is no recovery or discovery at the instance of the present applicant-accused. Learned advocate further submits that the applicant-accused was arrested on 23.01.2021 and since then, he is in judicial custody and therefore, considering the period of incarceration spent by the applicant-accused, the bail application may be entertained. It is alleged in the police papers that the present applicant – accused was in constant touch with the other accused persons, whose specific role is found out. Except that, no any other material has been found. Learned advocate further submits that the persons, whose role is graver than the present applicant- accused have already enlarged on bail by this Court and therefore, considering the principle of “law of parity”, the applicant-accused, may be considered. Considering the above stated factual aspect, the bail application of the applicant – accused may be considered as the other co -accused are found in possession of the MD drug were already considered by this Court. Under the circumstances, learned advocate for the applicant prays that the applicant may be enlarged on bail on any suitable terms and conditions.

4. The learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. Learned APP submits that the present applicant-accused is working as a drug paddler and he used to circulate the MD drug to the youth in the society and due to the illegal activities carried out by the present applicant – accused, number of persons have become drug addicted and the statements of those persons have been recorded by the Investigating Officer, which clearly shows that the present applicant-accused has provided drugs to those accused persons and they have been made drug addict. Considering the above stated factual aspect, the act of the applicant-accused would become threat to the society. Learned APP further submits that the trial has already commenced and number of witnesses are already examined. Learned APP has submitted that considering the role attributed to the applicant-accused, this is a fit case wherein discretionary power of this Court is not required to be exercised in favour of the applicant-accused.

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 of the investigation and considered the allegations levelled against the applicant and the role played by the applicant. This Court has also considered the following aspects;

(i) that the investigation has already been completed and charge-sheet has also

been filed;

(ii) that the name of the present applicant – accused is not mentioned in the body of the FIR, thereafter, during the course of investigation, on the basis of statement made by the co-accused, the applicant – accused has been arraigned as an accused.

(iii) that there is no recovery or discovery at the instance of the present applicant-accused.

(iv) that the persons, whose role is graver than the present applicant- accused have already enlarged on bail by this Court.

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 as well as in case of Satender Kumar Antil v. Central Bureau of Investigation & Anr. reported in (2022)10 SCC 51.

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 and the applicant is ordered to be released on regular bail in connection with C.R. No.11210015200082 of 2020 registered with the D.C.B. Police Station, Surat City, 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;

[g] shall not enter into the revenue limits of Surat City till the completion of the trial except for marking presence at the concerned police station as well as except for attending the trial.

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. 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.

11. 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. Rule is made absolute to the aforesaid extent.

Direct service is permitted.