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(2022) 02 GUJ CK 0080

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 22175 Of 2021

Raju Chhela Mundhava (Bharvad) — APPELLANT

Vs

State Of Gujarat — RESPONDENT

Date of Decision : 25-02-2022

Acts Referred:
Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 120B, 147, 148, 149
Gujarat Police Act, 1951 — Section 135

Citation : (2022) 02 GUJ CK 0080

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : Virat G Popat, Zeel Raval, Chintan Dave

Final Decision : Allowed

Judgement

Ashutosh J. Shastri, J

1. By way of this application under Section 439 of the Code of Criminal Procedure, 1973, regular bail is sought by the applicant in connection with the FIR being C.R. No.I-69 of 2017 registered with Dhrangadhra Police Police Station, Surendranagar for offence under Sections 302, 307, 326, 147, 148, 149 and 120-B of the Indian Penal Code read with Section 135 of the Gujarat Police Act.

2. Learned Advocate Mr. Virat Popat appearing on behalf of the applicant has submitted that considering the nature of the offence and the allegations which are attributed, the applicant deserves to be enlarged on bail, more particularly when learned advocate Mr. Popat has pointed out few orders passed by the Coordinate Bench of this Court indicating that in almost of similar role, co-accused persons have been enlarged on regular bail. In addition to that, Mr. Popat has pointed out that in Criminal Misc. Application No.22199 of 2021 also, the Coordinate Bench recently on 24.1.2022 was pleased to enlarge the said accused on regular bail, who, according to the prosecution, was absconding. Whereas, the present applicant is very much in judicial custody and in addition

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thereto, it is pointed out that in Narco analysis, which was undertaken over the applicant, it is revealed that this applicant was very much present at his shop and for that purpose, he has made a reference to the report, reflecting on page 44. Mr. Popat has further pointed out that in this complaint, not only the co-accused persons have been enlarged on regular bail but, even in cross-complaint filed by the present applicant side, the other accused persons of the said complaint have also been enlarged on bail by various orders passed with respect to the accused persons of that complaint and as such, considering this overall situation, the request of the applicant be considered.

3. In addition thereto, learned advocate Mr. Popat has further submitted that the Coordinate Bench has considered the issue about parity and in one of the decisions, it has been mentioned that though the case was not made out, on applying the principle of parity, the Court was pleased to grant regular bail to one of the co-accused person. The order is also referred to by learned advocate which is reflecting on page 66 passed by the Coordinate Bench on 30.6.2021 in Criminal Misc. Application No.6420 of 2021 and as such, has submitted that considering the overall situation prevailing now, the case of the applicant for regular bail be considered. It has further been pointed out that after release of all those co-accused persons of both the sides, efforts have been made by senior members of both these communities of the local area to resolve the dispute and there are reflections to the effect that an amicable solution be arrived at and for that, even the Coordinate Bench has also taken note while passing the order dated 24.1.2022. In addition to this, Mr. Popat has stated under instruction that the applicant is also inclined to abide by all the conditions which are mentioned with respect to the other two co-accused persons who are granted regular bail and for which he is inclined to file even an undertaking in addition to the conditions which may be imposed by this Court.

4. Leaned Additional Public Prosecutor Mr. Chintan Dave appearing on behalf of the prosecution has submitted that in view of the fact that several co-accused persons in connection with the present complaint have been enlarged on regular bail and peculiarity of the circumstance would reflect that concept of parity deserves to be considered and as such, without much resistance, has left to the discretion of the Court, more particularly when several orders have been passed with respect to the other co-accused persons.

5. In addition to the above, learned advocate Ms. Zeel Raval for Ms. Shweta Lodha appearing on behalf of the complainant has also given no much resistance rather has given tacit consent to consider the case and grant regular bail to the applicant. Hence, in view of the aforesaid situation which is prevailing on record, and while examining the case, no distinguishable circumstance is pointed out to deviate from the principle of parity in case of the present applicant, the Court has taken up the present application for its disposal.

6. Having heard learned advocates appearing on behalf of the parties and having perused the case papers placed before the Court, following are the circumstances

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which are not possible to be ignored by this Court:-

(1) The FIR which has been registered is dated 8.7.2017, for the offences which took place on 7.7.2017 and the applicant is in custody since 19.8.2021.

(2) In the present proceedings, investigation is already completed and charge-sheet has been filed.

(3) Additionally, several co-accused persons have been enlarged on regular bail and the Court has perused all the relevant orders which are placed on record before the Court for perusal.

(4) The Court has also perused one of the orders passed by the Coordinate Bench of this Court and the observations contained therein dated 30.6.2021 in Criminal Misc. Application No.6420 of 2021, in which also, despite the circumstance found not in favour to grant regular bail to one of the accused persons of the cross-complaint, the Court has applied the principle of parity and released the said accused person on regular bail.

(5) The Court has also taken into consideration the order dated 24.1.2022 passed in Criminal Misc. Application No.22199 of2021 and having taken note of paragraph 6 of the said order, precisely para (IV), (VI) and (VII), a case appears to have been made out by the present applicant for grant of bail.

7. In view of the aforesaid peculiar background of facts and circumstance and the nature of allegations which have been made out in the FIR as well as in view of the Narco analysis report placed on record, without discussing much in detail with respect to evidence, prima facie, the Court is of the opinion that the case is made out by the applicant to exercise discretion in favour of the applicant and enlarge him on regular bail.

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.

9. Hence, the present application stands ALLOWED. The applicant is ordered to be released on regular bail in connection with FIR being C.R. No.I-69 of 2017 registered with Dhrangadhra Police Police Station, Surendranagar, 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

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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) The applicant shall file an undertaking before this Court that he shall abide respective terms of settlement of affidavit and in case of breach of any of the terms of settlement by the applicant, bail order may be treated to be cancelled from the date of actual release of the applicant.

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.

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