

(2021) 04 GUJ CK 0067

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 4317 Of 2021

Rakesh @ Valsing S/O Kalu Mohaniya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 30-04-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 394, 413

Citation : (2021) 04 GUJ CK 0067

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Fouzan N Soniwala, B G Prajapati, Moxa Thakker

Final Decision : Allowed

Judgement

A.S. Supehia, J

1. Heard the learned advocates for the respective parties through video conferencing.

2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in connection with an FIR being

C.R.No.IA145 of 2012 registered with Changodar Police Station, Dist. Ahmedabad for the offences punishable under Sections 394, 413 and 114 of

the Indian Penal Code, 1860.

3. Learned advocate appearing for the applicant submitted that the entire complaint, if read as a whole or any part thereof, does not disclose any

ingredient to link the present applicant with the alleged offence in question because the complaint was registered against unknown persons and hence,

it can be said that the applicant is falsely implicated in the present case. He has submitted that on the basis of the statement of the co-accused

namely Gabbi @ Gababhai @ Gopal Variyabhai @ Dhaniya Khema Mohaniya and Ishwar Jorsing Mandor, who were arraigned in the impugned FIR,

the present applicant is arrested by the police. He has submitted that the Sessions Court has already released the above named co-accused on

regular bail vide its order dated 01.01.2014 passed in Criminal Misc. Application No.2447 of 2013. He has further submitted that there is no recovery

or discovery of the muddamal from the present applicant. Even the T.I. Parade is not conducted by the Investigating Officer. Lastly, it is urged by the

learned advocate for the applicant that the applicant may be released on bail.

4. Learned Additional Public Prosecutor Ms.Moxa Thakker appearing on behalf of the respondent-²State has opposed grant of regular bail considering

the nature and gravity of the offence and submitted that there are 12 antecedents of the present applicant and the muddamal articles are also

recovered from the present applicant.

5. Having perused the materials placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role

attributed to the accused, without discussing the evidence in detail, at this stage, this Court is inclined to grant regular bail to the applicant. This Court

has considered following aspects;

(i) The role attributed to the accused;

(ii) The investigation is over and the charge-sheet is filed;

(iii) The entire complaint, if read as a whole or any part thereof, prima facie does not disclose any ingredient to link the present applicant with the

alleged offence.

(iv) On the basis of the statement of the co-accused namely Gabbi @ Gababhai @ Gopal Variyabhai @ Dhaniya Khema Mohaniya and Ishwar

Jorsing Mandor, who were arraigned in the impugned FIR, the present applicant is arrested by the police.

(v) The Sessions Court has already released the above named co-accused on regular bail vide its order dated 01.01.2014 passed in Criminal Misc.

Application No.2447 of 2013.

(vi) There is no recovery or discovery of the muddamal from the present applicant.

(vii) Even the T.I. Parade is not conducted by the Investigating Officer.

6. This Court has also taken into consideration the law laid down by the Apex Court in the case of Sanjay Chandra Vs. Central Bureau of

Investigation, (2012) 1 SCC 40;

7. In the result, the present application is allowed and the applicant is ordered to be released on regular bail in connection with an FIR being

C.R.No.IA145 of 2012 registered with Changodar Police Station, Dist. Ahmedabad, on executing a personal bond of Rs.10,000/ (Rupees Ten

Thousand Only) with one local surety of the like amount to the satisfaction of the learned 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 his passport, if any, to the lower court within a week;

(d) deposit Rs.50,000/ cash with the concerned Trial Court;

(e) not enter Ahmedabad district and city for a period of 8 months;

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

(g) mark presence before the concerned Police Station on alternate every Monday for initial six months and thereafter, on alternate Monday of every

English calendar month, for a period of six months, between 10:00 a.m. and 2:00 p.m.;

(h) furnish latest 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 Trial Court;

8. 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 Trial Court will be free to issue warrant or take appropriate action in the matter. Bail bond to be

executed before the Trial Court having jurisdiction to try the case.

9. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions in accordance with law. At the trial, learned 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 accordingly.

10. Registry is directed to intimate the concerned jail authority and the

concerned Sessions Court about the present order by sending a copy of this order through Fax message, email and/or any other suitable electronic mode.

11. Learned advocate for the applicant is also permitted to send a copy of this order to the concerned jail authority and the concerned Sessions Court through Fax message, email and/or any other suitable electronic mode.