

(2020) 08 GUJ CK 0119

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9380 Of 2020

Rameshbhai Varsingbhai Ganava

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 11-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 395

Citation : (2020) 08 GUJ CK 0119

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : Vijal P Desai, JK Shah

Final Decision : Allowed

Judgement

Ashutosh J. Shastri, J

1. RULE. Mr. J.K. Shah, learned Additional Public Prosecutor waives service of rule on behalf of the respondent â?" State.

2. The present application under Section 439 of the Code of Criminal Procedure is filed for regular bail in connection with FIR being C.R. No. I-99 of

2019 registered with Limkheda Police Station, for the offences punishable under Section 395 of the Indian Penal Code.

3. Mr. Vijal Desai, learned advocate for the applicant has submitted that the applicant is an innocent person, wrongly been arraigned in prosecution.

The applicant is not connected with the alleged offence and on account of false implication, his case be considered for regular bail. It has further been

submitted that by now the charge sheet has been filed and there is no likelihood of misuse of liberty in any case. On the contrary, by false implication

in three more offences by transfer warrant, the applicant is involved in

commission of crime. The learned advocate for the applicant has further submitted that in one of the complaint being C.R. No. 121 of 2019, lodged before Limkheda Police Station, on the similar line, the applicant's case has been considered and granted regular bail on suitable conditions, vide order dated 23.07.2020 passed in Criminal Misc. Application No. 8926 of 2020. It has further been submitted that apart from that, even if take as it is, recovery of only to the extent of Rs.600/- by way of cash and nothing beyond that. On the contrary, only with a view to indicate that the applicant is having past instances, he is wrongly arraigned in three offences by transfer warrant. Hence, by imposing terms and conditions, he may be enlarged on bail.

3.1. Additionally, the learned advocate for the applicant has on instructions specifically submitted that the applicant is ready and willing to abide by any of the conditions, which the Court deems it proper to impose and he is prepared to live outside Dahod District till the trial is over and will mark his presence every week to the nearest Police Station and as such by considering the aforesaid gravity of offence and the innocence of the applicant, he may be enlarged on regular bail.

4. As against this, Mr. J.K. Shah, learned Additional Public Prosecutor for the respondent "State" has submitted that the applicant is arraigned in three more offences in similar kind of nature and is such as habitual offender, but learned Additional Public Prosecutor could withstand that in another cognate offence, the applicant has been extended bail vide order dated 23.07.2020, which is reflecting on page 33 of the application compilation and from the report dated 09.08.2020 submitted by the Police Inspector, Limkheda Police Station, Mr. Shah, learned Additional Public Prosecutor, has candidly submitted that only Rs.600/- is recovered from the applicant and has left it to the discretion of the Court.

5. Having heard the learned advocates appearing for the respective parties, it appears that looking to the gravity of offence, looking to the magnitude of the recovery and looking to the fact that in another cognate offence, the applicant is already enlarged on bail. Hence, a case is made out for release of regular bail.

5.1. Additionally, the charge sheet has already been submitted and there is no likelihood of misuse of any liberty since the applicant on his own has

shown readiness and willingness leave Dahod District till the trial is over and has shown readiness and willingness to mark his presence regularly.

Hence, in these set of circumstance, the Court is inclined to consider the request of the applicant. Accordingly, the present application is allowed. The

applicant is ordered to be released on regular bail in connection with FIR being C.R. No. I-99 of 2019 registered with Limkheda Police Station, on his

executing 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;

[c] surrender passport, if any, to the lower court within a week

[d] not leave the India without prior permission of the Sessions Judge concerned;

[e] since the applicant has shown willingness to abide by any of the condition, he shall not enter Dahod District till the trial is over and shall furnish

fresh address about his residence outside Dahod District to the concerned Police Station.

[f] shall mark presence before the nearest Police Station of his area of residence outside Dahod District, every week, till the trial is over between

11:00 a.m. and 2:00 p.m.;

[g] 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;

6. 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.

7. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

8. Rule is made absolute to the aforesaid extent.

9. The Registry is directed to communicate this order by Email/ FAX to the

concerned trial Court, forthwith.