

(2022) 01 GUJ CK 0115

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 18926 Of 2021

Rameshbhai Vershibhai Ode

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 31-01-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 143, 147, 149, 323, 365, 366, 370, 376,
506(1)

Citation : (2022) 01 GUJ CK 0115

Hon'ble Judges : Dr.Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Jayshree C Bhatt, Moxa Thakkar

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This Application is filed by the Applicant â?" Accused under Section 439 of the Code of Criminal Procedure for enlarging the applicant on Regular

Bail in connection with I-C.R. No. 82/2013 registered with Radhanpur Police Station, District Patan for the offences punishable under Sections 143,

147, 149, 323, 365, 366, 370, 376, 506(1) and 114 of the Indian Penal Code.

2. Heard learned Advocate Ms. Jayshree C. Bhatt for the Applicant and learned APP Ms. Moxa Thakkar for the Respondent State through Video

Conference.

Submission of the Parties:

3. Learned Advocate for the Applicant / Accused has submitted that the Applicant Accused is innocent as he has not taken part in the offence as

alleged. He has family roots in the society and therefore, he is not likely to flee

away from justice. That the charge sheet is filed. That he will abide by whatever conditions imposed by the Hon'ble Court. She has further vehemently submitted that there is no direct involvement of the Applicant Accused in the present case so far as allegation is concerned. There are no antecedents against the Applicant Accused. Learned Advocate for the Applicant has further submitted that the co-accused have been acquitted after the due trial and there is no prima facie case except the allegations of abetment. She has therefore prayed that discretion may kindly be exercised and grant bail to the Applicant Accused.

4. Per contra, learned APP has vehemently argued that though there is no antecedent but the Applicant has accompanied at the time of so-called commission of the offence and therefore discretion may not be exercised and ultimately she has opposed grant of bail looking to the nature and gravity of offence, involvement of the Applicant / Accused. That the charge sheet is filed. Learned APP has further submitted that the investigating agency has issued warrant under Section 17 and also the proclamation process and thereafter in August 2021 the Applicant has been arrested and there is a clear case of abetment. Learned APP has further submitted that the Applicant was not available for a very long period and therefore necessary steps have been taken by the investigating agency. She has has therefore prayed that discretion may not be exercised and the Application may be rejected.

Merits of the Case:

5. This court has considered the following aspects:

(a) That in the present case it is an admitted fact that the Applicant accused has come for this Application after the charged sheet is filed.

(b) That even if it is a prima facie case, then also as such there is no antecedent.

(c) Further as per catena of decisions of Hon'ble Supreme Court, there are mainly 3 factors which are required to be considered by this court i.e.

prima facie case, availability of Applicant accused at the time of trial and tampering and hampering with the witnesses by the accused.

(d) That the co-accused have been acquitted after due trial.

(e) The role attributed to the Applicant is only abetment and that is to the extent that the Trial Court has observed that there is no prima facie evidence

so far as the transactions of Rs.1,50,000/- is concerned.

(f) That the learned Advocate for the Applicant has submitted that the Applicant Accused is not likely to flee away.

(g) That the Applicant Accused is in custody since 10.8.2021.

(h) The law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. C.B.I. Reported in (2012) 1 SCC 40, wherein it is held that bail is

a rule and jail is an exception.

6. Having heard the learned Advocates for the parties and perusing the record produced in this case as well as taking into consideration the facts of

the case, nature of allegations, gravity of accusation, availability of the Applicant Accused at the time of Trial etc. and the role attributed to the present

Applicant accused, the present Application deserves to be allowed and accordingly stands allowed. The Applicant Accused is "RAMESHBHAI

VERSHIBHAI ODE is ordered to be released on regular bail in connection with I-C.R. No. 82/2013 registered with Radhanpur Police Station,

District Patan on executing a personal bond of Rs.25,000/- with one surety of the like amount to the satisfaction of the trial Court, subject to the

following conditions that he shall:

(a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from

disclosing such facts to the Court or any Police Officer or tamper with the evidence.

(b) maintain law and order and not to indulge in any criminal activities.

(c) furnish the documentary proof of complete, correct and present address of his residence to the Investigating Officer and to the Trial Court at the

time of executing the bond and shall not change his residence without prior permission of the trial Court.

(d) provide his contact numbers as well as the contact numbers of the sureties before the Trial Court. In case of change in such numbers inform in

writing immediately to the trial Court.

(e) file an affidavit stating his immovable properties whether self acquired or ancestral with description, location and present value of such properties

before the Trial Court, if any.

(f) not leave India without prior permission of the Trial Court

(g) mark presence before the concerned police station on every 1st day of

English calendar month between 12:00 Noon and 2:00 PM till one year or till the trial is concluded, whichever is earlier.

(h) surrender passport, if any, to the Trial Court within a week. If he does not possess passport, he shall file an Affidavit to that effect.

(i) shall maintain all the rules and regulations framed by the Municipality regarding contemporary status of corona virus/Covid-19, State Government or by any competent authority, including social distancing.

7. Bail bond to be executed before the Trial Court having jurisdiction to try the case. It would be open for the Trial Court concerned to give time to

furnish the solvency certificate if prayed for.

8. If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according

to law. The Authorities will release the Applicant forthwith only if he is not required in connection with any other offence for the time being.

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

10. Rule is made absolute. The Registry is directed to communicate this order by Fax / by E-mail to the concerned Court / Authority.