

(2023) 12 GUJ CK 0082

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - After Chargesheet) No.
22797 Of 2022

Rameshbhai Virsingbhai Parmar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 22-12-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Gujarat Control Of Terrorism And Organised Crime Act, 2015 — Section 2(1)(a) (i),
2(1)(a)(ii), 3(1)(ii), 3(2), 3(3), 3(4)
Indian Penal Code, 1860 — Section 120B, 395, 397, 412

Citation : (2023) 12 GUJ CK 0082

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Vasimraja A Kureshi, H.K. Patel

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with C.R.No.11821052210032 of 2021 registered with Piplod Police Station, District Dahod for the offence punishable under sub-sections 2(1)(a) (i), 2(1)(a)(ii), 3(1)(ii), 3(2), 3(3) and 3(4) of the Gujarat Control of Terrorism and Organised Crime Act, 2015 (hereinafter referred to as the 'GUJCTOC Act' for short) and under Sections 395, 397, 412 and 120B of the Indian Penal Code.

2. Learned Advocate for the applicant accused submits that FIR has been registered against the accused persons on 01.10.2021 and applicant accused has been arrested on 22.11.2021 and since then he is in judicial custody. The investigation is already completed and after submission of charge-sheet, present bail application is preferred. It is further submitted that the co-accused persons have already been enlarged on bail by the Coordinate Bench of this Court as well

as learned Sessions Court. Therefore, applicant accused may also be enlarged on bail on the principle of law of parity. It is further submitted that applicant accused is in jail since last more than two years and therefore, considering the period of incarceration undergone by the applicant, he may be enlarged on bail. Learned advocate has put reliance upon the order dated 02.09.2022 rendered in Criminal Appeal No.1404 of 2022 in the case of Shivrajbhai Rambhai Vichhiya v. the State of Gujarat by the Hon'ble Apex Court and submitted that though the said accused was having history of criminal antecedents of 10 cases, only on the ground of period of incarceration undergone by the said accused person, the said accused has been enlarged on bail by the Hon'ble Apex Court. Learned advocate has also read the provisions of Sections 2(1) (a), 2(1)(c), 2(1)(e) and 2(1)(f) of GUJCTOC Act. It is further submitted that for attracting the provisions of the GUJCTOC Act, the investigating officer has considered 6 offences which includes present offence as well and out of said 6 offences, 3 offences were registered before the promulgation of the GUJCTOC Act and 3 offences were registered after the promulgation of the GUJCTOC Act. Considering the above stated factual aspects, applicant may be enlarged on bail by imposing suitable terms and conditions.

3. Learned APP Mr. H. K. Patel has objected present bail application with vehemence and submitted that role of the present applicant accused is clearly established from the compilation of charge-sheet papers. Learned APP Mr. Patel further submits that applicant accused is the member of an organized crime syndicate run by the main accused person and said fact is clearly established from the papers of the charge-sheet. Moreover, considering the past antecedents, bail application of the applicant undefined may not be entertained. Learned APP Mr. Patel has relied upon the decision of Hon'ble Supreme Court in the case of Zakir Abdul Mirajkar v. the State of Maharashtra & Ors, rendered in Criminal Appeal No.1125 of 2022, and submitted in the said case, it has been specifically observed by the Hon'ble Supreme Court that, 'it is settled law that more than one charge sheet is required to be filed in respect of the organized crime syndicate and not in respect of each person who is alleged to be a member of such a syndicate'. Learned APP, therefore, submits that present bail application may not be considered.

4. I have heard the learned advocates appearing on behalf of the respective parties. I have perused the police papers as well as other documents produced by the applicant along with the memo of the application. It is found out from the record that the applicant accused has been arrested on 22.11.2021 and since then he is in judicial custody. The investigation is already completed and after submission of charge-sheet, present bail application is preferred. It is found out from the record that co-accused persons have already been enlarged on bail by the Coordinate Bench of this Court as well as learned Sessions Court. The Hon'ble Apex Court in the case of Shivrajbhai Rambhai Vichhiya (supra), while enlarging the concerned appellant accused on bail, observed as under:

"Leave granted.

Heard learned counsel for parties.

We would not like to record any detailed order at this stage which may prejudice the either of the sides, but suffice to say that out of 10 cases alleged against the appellant, there is one serious case which is stated to be of a murder where the appellant is already enjoying anticipatory bail.

The appellant has been held under the Gujarat Control of Terrorism and Organized Crime Act, 2015 and he has already spent about two and a half years in custody."

Thus, considering the aforesaid decision as also the fact that the applicant accused is behind the bars since last more than 2 years and the co-accused have been enlarged on bail by the Coordinate Bench of this Court as well as learned Sessions Court, on the principle of law of parity, I am of the opinion that present bail application deserves consideration.

5. 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.

6. 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.

7. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with C.R.No.11821052210032 of 2021 registered with Piplod Police Station, District Dahod 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;

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 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.

9. 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.

10. The present application stands allowed accordingly. Direct service is permitted. Rule is made absolute to the aforesaid extent.