

(2021) 04 GUJ CK 0066

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 4386 Of 2021

Rohitbhai Devshibhai Solanki

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, 120B, 323, 342, 364A, 365, 504, 506(2)

Gujarat Police Act, 1951 — Section 135

Citation : (2021) 04 GUJ CK 0066

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

Bench : Single Bench

Advocate : Samir Afzal Khan, Moxa Thakker

Final Decision : Allowed

Judgement

A.S. Supehia, J

1. RULE. Learned Additional Public Prosecutor waives service of rule on behalf of the respondent-State.

2. The present application is filed under Section 439 of the Code of Criminal Procedure in connection with an FIR being C.R. No.I-68 OF 2012

registered with the Dhoraji Police Station, Dist. Rajkot (Rural) for the offences punishable under Sections 365, 364A, 342, 323, 504, 506(2), 120B, 114

of the Indian Penal Code, 1860 and Section 135 of the Gujarat Police Act.

3. Learned advocate appearing for the applicant submitted that the applicant was put to bail earlier in the same matter however, since the applicant

has changed the residence at Rajkot from Upleta the summons were not served to him. It is submitted that prima facie the applicant has not been

involved in the present case as all other co-accused are acquitted. It is submitted

that directly non-bailable warrant was issued and bailable warrant was never issued to applicant. It is submitted that therefore, as per several ruling of the Apex Court after the Bail in rare conditions the bail is required to be cancelled therefore, the applicant since there is no prima facie case against the applicant therefore, he may be granted regular bail once again in the interest of justice.

4. Learned advocate for the applicant further submitted that the applicant was released on bail in the year 2013. He has established his family life; he is married and also blessed with one daughter, who is now six months old and though orally many antecedents are mentioned but no description are mentioned. It is urged by the learned advocate for the applicant that the applicant may be released on bail.

5. Learned Additional Public Prosecutor appearing on behalf of the respondent-State has opposed grant of regular bail considering the nature and gravity of the offence.

6. 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 counter charge-sheet is filed;
- (iii) The applicant is behind bar since 07.11.2020;
- (iv) The applicant was released on bail 17.04.2013;
- (v) All the accused are acquitted by the Trial Court.

7. 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;

8. 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.I-68 OF 2012 registered with the Dhoraji Police Station, Dist. Rajkot (Rural), on executing a personal bond of Rs.15,000/- (Rupees Fifteen

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) not leave the State of Gujarat without prior permission of the concerned Trial Court;
- (e) deposit Rs.50,000/- (Fifty thousand Only) in cash before the concerned trial Court;
- (f) 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.;
- (g) 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;
- (h) remain present as and when called by the police authorities and the court.

9. 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.

10. 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.

11. 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.

12. 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.