

(2021) 02 GUJ CK 0057
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 171 Of 2021

Sagarbhai Dineshbhai Mistri (Suthar) APPELLANT
Vs
State Of Gujarat RESPONDENT

Date of Decision : 08-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Citation : (2021) 02 GUJ CK 0057

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : AM Parekh, Moxa Thakkar

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Shri A.M. Parekh for the applicant and learned APP Ms. Moxa Thakkar for the respondent-State.

2. This application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 for being released him on regular bail in

connection with F.I.R. registered as C.R. No.11216010200384 of 2020 with Pethapur Police Station, District:- Gandhinagar, for the offences

punishable under Sections 306, 384 and 114 of the Indian Penal Code dated 17.09.2020.

3. At the outset, learned APP submits that during the pendency of this application, the Inquiry Officer has filed charge-sheet.

4. Learned Advocate Shri Parekh for the applicant submits that the co-accused has been granted regular bail by this Court and therefore, this Court

may not take into consideration the fact of charge-sheet being filed in the interregnum. He further submits that on perusal of the complaint, it reveals

that he had borrowed money from the deceased and had not returned back therefore, and whereas in the complaint, it is mentioned that there is no written agreement between applicant and the deceased. He draws the attention of this Court to the order passed by the Coordinate Bench of this Court (Coram: Ilesh J. Vora, J.) dated 15.10.2020 in Criminal Misc. Application No.15243 of 2020, where the Coordinate Bench was pleased to release the accused â?" Ronak @ Bholo Narendrabhai Kothari and whereas the role attributed to the present applicant and role attributed to the said accused is similar i.e. borrowed money from the deceased. He further submits that this Court may grant the same benefits as made available to the applicant of Criminal Misc. Application No.15243 of 2020. He further submits that the applicant may be released on regular bail by this Court after imposing suitable conditions.

5. As against the same, learned APP Ms. Moxa Thakkar appearing for the respondent â?" State has strongly opposed present application and submits that considering the seriousness of the offences in which the applicant is involved, this Court may not show any indulgence towards the applicant.

6. Having regard to the fact that the applicant has prayed for grant of regular bail, learned Advocates appearing on behalf of the respective parties do not press for further reasoned order.

7. I have heard learned advocates appearing on behalf of the respective parties and perused the papers. Following aspects are considered:-

(i) Co-accused against whom similar allegation as levelled against the present applicant, had been released on regular bail by the Coordinate Bench of this Court;

(ii) The applicant being in custody since 02.12.2020.

This Court has taken into consideration the law laid down by the Honâ??ble Apex Court in the case of Sanjay Chandra v. Central Bureau of

Investigation reported in [2012] 1 SCC 40 .

8. In the facts and circumstances of the case and considering the nature of the allegations made against in the First Information Report, 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.

9. Hence, the present application is allowed. The applicant is ordered to be released on bail in connection with F.I.R. registered as C.R. C.R.

No.11216010200384 of 2020 with Pethapur Police Station, District:-Gandhinagar, on executing a 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 State of Gujarat without prior permission of the Sessions Judge concerned;

[e] Mark presence at the concerned Police Station on every Monday of each English Calender month for a period of six months and thereafter any

day of the first week of every English Calender month for a period of six months between 11:00 a.m. to 2:00 p.m.

[f] furnish the present address of residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residential

address without prior permission of the Sessions Court;

10. 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.

11. 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.

12. At the stage of trial, the trial court shall not be influenced by any observations of this Court which are of preliminary nature made at this stage,

only for the purpose of considering the application of the applicant for being released on regular bail.

13. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent.

Direct service through electronic mode is permitted.