

(2022) 10 GUJ CK 0044
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 11871 Of 2022

Sandip @ Dipak Shersing @ Kundansing Yadav	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 07-10-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 143, 147, 148, 149, 302, 307
Gujarat Police Act, 1951 — Section 135(1)

Citation : (2022) 10 GUJ CK 0044

Hon'ble Judges : Nirzar S. Desai, J

Bench : Single Bench

Advocate : Hardik A Dave, Manan Mehta

Final Decision : Allowed

Judgement

Nirzar S. Desai, J

1. Heard learned advocate Mr.Hardik Dave for the applicant and learned Additional Public Prosecutor Mr.Manan Mehta for the respondent – State.

2. By this application filed under Section 439 of the Code of Criminal Procedure, 1973, the applicant is seeking release on regular bail in connection with the FIR being I-C.R.No.16 of 2019 registered with Dindoli Police Station, District Surat for offences punishable under Sections 302, 307, 324, 143, 147, 148 and 149 of the Indian Penal Code and Section 135(1) of the GP Act.

3. Learned advocate for the applicant submitted that, the applicant is not involved in commission of offence as alleged in the FIR and therefore, looking to the role of the applicant and nature of the allegations, the applicant is required to be enlarged on regular bail by imposing suitable terms and conditions.

4. On the other hand, learned APP appearing for the respondent – State vehemently submits that, the offences which have been charged are serious in nature affecting the society at large and looking to the facts as well as the

allegations made against the applicant, no discretion would be required to be exercised.

5. In the facts and circumstances of the case and considering the nature of allegations, this Court is of the opinion that, discretion is required to be exercised to enlarge the applicant on regular bail. This Court has considered the following facts while exercising discretion in favour of the applicant :-

(i) though this application is successive bail application, this Court has considered the aspects that;

(ii) the applicant is in jail since 28.01.2019;

(iii) the investigation is over and the charge-sheet is filed;

(iv) vide order dated 22.07.2020, the applicant had withdrawn earlier Criminal Miscellaneous Application No.8809 of 2020 and thereafter this application is preferred after 26 months;

(v) in between, three co-accused have been enlarged on regular bail by the coordinate Bench of this, details of which are as under:

(i) co-accused Rahul @ Bediya Sunil Ramdas Mahajan, vide order dated 04.05.2021, passed in Criminal Miscellaneous Application No.5425 of 2021;

(ii) co-accused Komalsing @ Mama Dilipsing Girase, vide order dated 28.07.2021, passed in Criminal Miscellaneous Application No.11260 of 2021; and

(iii) co-accused Anand Prakashbhai Pandurang Khedkar, vide order dated 18.02.2022, passed in Criminal Miscellaneous Application No.2183 of 2022;

(vi) though there is an antecedent as reported by learned Additional Public Prosecutor against the present application for an offence punishable under Section 302 read with other relevant sections of Indian Penal Code, learned advocate Mr.Dave for the applicant has placed on record the simple copy of the judgment and order dated 17.03.2017 passed by the learned 7th Additional District and Sessions Judge, Surat in Sessions Case No.215 of 2014 wherein the present applicant is though shown as accused no.1, is acquitted by the Sessions Court, Surat.

6. In view of the aforesaid facts, without discussing the evidence in detail, this Court, prima facie, is of the opinion that, this is a fit case to exercise the discretion and enlarge the applicant on regular bail. Hence, present application is allowed and the applicant is ordered to be released on regular bail in connection with the FIR being I-C.R.No.16 of 2019 registered with Dindoli Police Station, District Surat on executing personal bond of Rs.10,000/-(Rupees Ten thousand only) with one 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 passport, if any, to the lower court within a week;
- [d] not leave India without prior permission of the Sessions Judge concerned;
- [e] not to enter into local limits of District:Surat, except for the purpose of marking presence and attending the court proceedings, without prior permission of the Court, till the trial is over.
- [f] 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;
- [g] mark his presence before the concerned police station in the first week of every month till the trial is over;

7. The Authorities will release the applicant only if the applicant 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 learned 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. 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.

8. Rule is made absolute to the aforesaid extent. Direct service is permitted.