

(2023) 12 GUJ CK 0080

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - After Chargesheet) No. 15412 Of 2023

Sandipkumar Manubhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 22-12-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 120(B), 406, 409, 420
Prize Chits And Money Circulation Schemes (Banning) Act, 1978 — Section 4, 5, 6
Gujarat Protection Of Interest Of Depositors. (In Financial Establishments) Act, 2003 — Section 3

Citation : (2023) 12 GUJ CK 0080

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Krupaben S Limbachiya, Chirag B Upadhyay, 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 the FIR being C.R. No.11210015230030 of 2023 registered with the D.C.B. Police Station, Surat of the offence punishable under Sections 406, 409, 420, 34 and 120(B) of the IPC and Sections 4,5, and 6 of the Prize Chit and Money Circulation Schemes (Banning) Act and Section 3 of the Gujarat Protection of Interest of Depositors (In Financial Establishments) Act, 2003.

2. Learned advocate Mr. C.B. Upadhyay appearing on behalf of the applicant has submitted that the so called incident took place during the period between 09.01.2019 and 18.01.2023 for which the first information report came to be lodged on 18.01.2023. The applicant-accused came to be arrested on 22.03.2023 and since then he is in jail. The investigation has been completed

and the charge-sheet has also been filed. He was working as a Director in the Shukul Wealth Creator LLP. It is submitted that the present applicant-accused is exonerated from the liabilities of the aforementioned company by the SEBI. It is also submitted that the applicant-accused has not gained any monetary benefit out of the said transaction and the applicant has never met the first informant or other witnesses. Learned advocate Mr. Upadhyay has also submitted that one another lady accused, namely, Happy Kishorbhai Kanani, who was shown to be the Director of the Company has already been enlarged on bail by the learned Sessions Court. The other identically situated co-accused persons have also been enlarged on bail by this Court. Learned advocate Mr. Upadhyay has also submitted that the case of the prosecution hinges upon the documentary evidences and voluminous record has been collected by the Investigating Officer during the course of investigation. It is further submitted that all the offences as alleged are exclusively triable by the Court of Magistrate. Learned advocate Mr. Upadhyay has also submitted that in another complaint filed against the applicant-accused in the State of Maharashtra, he has already been enlarged on bail. Under the circumstances, learned advocate for the applicant prays that the applicant may be enlarged on bail on any suitable terms and conditions.

3. The learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. Learned APP has submitted that from the charge-sheet papers, the role of the present applicant-accused is clearly spelt out. He has actively participated in the commission of the offence. As per the case of the prosecution, the applicant-accused has lured the people by inviting them to invest their hard earned money in the company knowing fully well that the company is not working in a proper mode and thereby duped the people at large and, therefore, this is a fit case wherein discretionary power of this Court is not required to be exercised in favour of the applicant-accused.

4. Learned advocate Mr. A.S. Timbaliya appearing on behalf of the complainant has submitted that the role of the present applicant accused is clearly spelt out from the charge-sheet papers. The name of the applicant-accused is clearly mentioned in the first information report. Therefore, considering the above stated factual aspects, the applicant-accused may not be enlarged on bail.

5. The learned advocates appearing on behalf of the respective parties do not press for further reasoned order.

6. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers of the investigation and considered the allegations levelled against the applicant and the role played by the applicant. This Court has also considered the following aspects;

a) That the investigation has already been completed and charge-sheet has also been filed;

b) That the applicant-accused is in jail since 22.03.2023;

c) That the applicant is the Director of the Company and he has been exonerated from the liabilities of the Company by the SEBI;

d) That the co-accused, who was the Director of the Company has already been released on bail by the learned Sessions Court and the other identically situated persons have also been released on bail by this Court;

e) That all the offences are exclusively triable by the court of Magistrate;

7. 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.

8. 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.

9. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.11210015230030 of 2023 registered with the D.C.B Police Station, Surat City, 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;

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 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. Rule is made absolute to the aforesaid extent.

Direct service is permitted.