

(2024) 02 GUJ CK 0056

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - After Chargesheet) No. 19497 Of 2023

Sanjiv Bhagwatiprasad Nishad

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 15-02-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 34, 420, 465, 466, 467, 468

Citation : (2024) 02 GUJ CK 0056

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : R.J. Goswami, Mohddanish M Barejia, Divyangana Jhala

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. Rule. Learned APP waives service of notice of Rule on behalf of respondent-State.

2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with C.R. No. 11210045233138 of 2023 registered with the Pandesara Police Station, District Surat for the offence punishable under Sections 420, 465, 466, 467, 468 and 34 of the Indian Penal Code.

3. Learned advocate Mr. Goswami who appears on behalf of learned advocate Mr. Barejia for the applicant has submitted that the so called incident has occurred on 16.07.2023 and FIR was registered was registered on 16.07.2023. The applicant was arrested on 18.07.2023 and since then he is in judicial custody. It is also submitted that the investigation is already completed and the present application is filed after submission of the charge-sheet. Learned advocate for the applicant submits that initially the FIR was registered against four accused

persons, wherein applicant has been shown as accused No.4 in the FIR. Learned advocate submits that it is the case of the prosecution that present applicant has floated a scheme to dupe innocent and gullible persons by luring them to deposit amount with them to get learning and regular licence, insurance and fitness certificate and on the strength of the above stated scheme introduced by the applicant, number of witnesses have deposited amount for the purpose of getting those government authentic documents. It is the case of the prosecution that during the course of investigation, the members of the investigating agency have found that total amount of Rs. 6,44,100/- were taken by the accused persons from the witnesses, out of which, the present applicant has received Rs. 1,96,780/- towards his commission. Learned advocate submits that at this juncture without entering into further controversy and solely with intent to show his bona fide, the applicant has filed an undertaking, which is produced on record, to the effect that he is ready and willing to deposit the amount of Rs. 1,50,000/- before the concerned trial Court without prejudice to his rights and contentions within a period of one week from the date of his actual release. Learned advocate submitted that all the offences are exclusively triable by the Court of Magistrate and the case of the prosecution hinges upon documentary evidence, which are already collected by the IO during the course of investigation. Considering the above stated factual aspect, the present applicant may be enlarged on regular bail by imposing suitable terms and conditions.

4. Learned APP appearing on behalf of the respondent-State has opposed the present bail application. It is submitted that the role of the present applicant is clearly spelt out from the body of the compilation of the charge sheet papers. Considering the role attributed by the present applicant, the present application may not be considered.

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

6. I have perused the police papers as well as documents produced by the applicant along with the memo of the application. It is found out from the record that the applicant is jail since 18.07.2023. The investigation is already completed and the present application is filed after submission of the charge-sheet. I have considered the role attributed to the present applicant – accused. All the offences are exclusively triable by the Court of Magistrate and the prosecution case hinges upon documentary evidence, which have already been collected by the IO during the course of investigation. Over and above that, the applicant has shown willingness to deposit the amount of Rs. 1,50,000/- before the concerned trial Court within a period of one week from the date of his actual release without prejudice to his rights and contentions. Considering the role attributed by the present applicant at the time of commission offence, I am inclined to exercise the discretion in favour of the applicant.

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 as well as in case of Satender Kumar Antil v. Central Bureau of Investigation & Anr. reported in (2022)10 SCC 51.

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 C.R. No. 11210045233138 of 2023 registered with the Pandesara Police Station, District Surat, 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. to 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;

[g] deposit the amount of Rs. 1,50,000/- before the concerned trial Court within a period of one week from the date of his actual release without prejudice to his rights and contentions and shall also file such undertaking before the concerned court after his release and abide by the undertaking filed by him before 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. 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.

11. 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.

12. The present application stands allowed accordingly. Rule made absolute to

the aforesaid extent.

Direct service is permitted.