

(2024) 03 GUJ CK 0073

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 4805 Of 2024 (For Regular Bail - After Chargesheet)

Shabir @ Shabo Iqbalbhai Abbasi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 21-03-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 269

Gujarat Control Of Terrorism And Organised Crime Act, 2015 — Section 3(2), 3(4)

Citation : (2024) 03 GUJ CK 0073

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Krunal L Shahi, LB Dabhi

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 the FIR being C.R. No.11208056201233/2020 registered with the Thorala Police Station, Rajkot for the offence punishable under Sections 3(2) and 3(4) of the GUJCTOC Act.

3. Learned advocate for the applicant submitted that the so-called incident has taken place for the period between 01.01.2010 to 18.06.2020, for which, the FIR has been lodged on 19.08.2020 and the applicant has been arrested in connection with the same on 21.08.2020 and since then, he is in judicial custody. Learned advocate submitted that now the investigation is completed and after submission of the chargesheet, the present application is preferred. Learned advocate submitted that FIR has been lodged against total 11 accused persons,

wherein the applicant is shown as accused no.11 and at the time of registration of the FIR, four offences have been considered. Learned advocate, under the instructions, submitted that out of total four offences registered against the applicant, two offences have been registered against the applicant after promulgation of the Act and out of which, one offence is under Section 269 of the IPC, wherein maximum punishment is six months. Learned advocate put reliance upon the decision of the Hon'ble Apex Court in case of Shivrajbhai Rambhai Vichhiya Vs. state of Gujarat, delivered in Criminal Appeal No.1404/2022 and submitted that though in the said case, ten offences were registered against the said accused, the Hon'ble Supreme Court has enlarged the said accused only on the ground of period of incarceration undergone by the said accused. Relying upon the said decision, learned advocate submitted that on the case on hand, the applicant is behind the bars since last more than three years. Learned advocate further submitted that the identically situated co-accused, whose names are there in the FIR, have already been considered by this Court as well as the Co-ordinate Bench of this Court. It is, therefore, urged that considering the nature of the offence and on the ground of parity, the applicant may be enlarged on regular bail by imposing suitable conditions.

4. Learned APP for the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. It is submitted that the role of the present applicant is clearly spelt out from the papers of the chargesheet. Learned APP has relied upon the decision of Hon'ble Supreme Court in the case of Zakir Abdul Mirajkar Vs. the State of Maharashtra & Ors., rendered in Criminal Appeal No.1125 of 2022, and submitted in the said case, it has been specifically observed by the Hon'ble Supreme Court that, 'it is settled law that more than one charge sheet is required to be filed in respect of the organized crime syndicate and not in respect of each person who is alleged to be a member of such a syndicate'. Thus, from the aforesaid decision it is clear that requirement of registration of more than one charge-sheet, as per the provisions of GUJCTOC Act, would be in respect of organized crime syndicate and not in respect of each person who is alleged to be a member of such syndicate. It is, therefore, urged that the present application may not be entertained.

5. 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. It is found out from the record that the present application is preferred after submission of the chargesheet and now the investigation is completed and the applicant is in jail since 21.08.2020 i.e. since last more than three years. As stated above, total four offences have been considered by the authority while registration of offence, however, out of those offences, two offences were registered before promulgation of the GUJCTOC Act, whereas two offences have

been registered after promulgation of the Act, out of which, in one offence, maximum punishment that can be imposed if the applicant is convicted, is upto six months. Further, similarly situated co-accused, whose names are there in the FIR, have already been considered by this Court as well as by the Co-ordinate Bench of this Court. Therefore considering the above factual aspects as also considering the period of incarceration undergone by the applicant, which is more than three years and also on the principle of law of parity, the present application deserves to be allowed.

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. 8. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.11208056201233/2020 registered with the Thorala Police Station, Rajkot 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;

[g] not enter into Rajkot district till completion of trial except for marking presence as also for attending court proceedings;

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 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.

10. 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.

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