

(2023) 12 GUJ CK 0069

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - After Chargesheet) No. 13767 Of 2023

Shankarbhai Shivabhai Devipujak

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 19-12-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 2(iii)(b), 8(B), 20(a) (1), 20(b)(2)B, 22(B)

Citation : (2023) 12 GUJ CK 0069

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Asif A Ghanchi, Zubin F Bharda, Ashmita 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 C.R.No.11217029230244 of 2023 registered with Sami Police Station, District Patan for the offence punishable under Sections 8(B), 20(a) (1), 20(b)(2)B and 22(B) of the Narcotic Drugs and Psychotropic Substances Act ('NDPS Act' for short).

2. Learned advocate Mr. Bharda appearing on behalf of the applicant submits that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions. It is submitted that present application is preferred after the submission of the charge-sheet. The complaint is registered on 16.05.2023 and applicant has been arrested on the same day and since then he is in judicial custody. Learned advocate Mr. Bharda further submits that as per the case of the prosecution, the applicant has cultivated cannabis plant in his agricultural field along with other crops without any valid licence and total 07 plants, weighing 16.860 kg, were recovered from the

conscious possession of the present applicant accused. It is submitted that the quantity is subject to quantitative and qualitative examination of each of the plants seized and recovered and therefore till the said examination is done, it cannot be said that the quantity of the seized contraband substance would fall under the commercial quantity and therefore the applicant may be enlarged on bail. Learned advocate Mr. Bharda has submitted that as per the case of the prosecution, the said quantity of Ganja would fall under the category of commercial quantity. Learned advocate has placed reliance upon Section 2(iii)(b) of the NDPS Act and submitted that as per the definition of 'Ganja' mentioned in the NDPS Act, ganja means the flowering or fruiting top of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops). Thus, the entire contraband article seized would not fall and cannot be said to be Ganja as defined under the definition of 'Ganja' in the statute because the leaves and seeds were not segregated from the flowering or fruiting tops of cannabis plants and therefore the total weight arrived at by the prosecution is not acceptable in law. Learned advocate Mr. Bharda has, thus, submitted that considering the aforesaid factual aspects of the matter, the applicant may be enlarged on bail by imposing suitable terms and conditions.

3. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail with vehemence and submitted that total 07 plants of contraband substance Ganja were recovered from the conscious possession of the present applicant accused and the volume of the contraband article clearly goes on to show that the same would have been used for the purpose of selling. Therefore, considering the above stated factual aspects, bail application of the applicant may not be considered.

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

5. 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 present applicant accused is in judicial custody since 16.05.2023.

The investigation is already completed and after submission of the charge-sheet, present application has been filed. Learned advocate Mr. Bharda for the applicant has emphatically submitted that the effect of the total weight of the cannabis plant cannot be considered while determining the quantity of contraband substances. Learned advocate has heavily put reliance upon the definition of 'cannabis (hemp)'. Section 2(iii)(b) of NDPS Act defines that 'ganja' means the flowering or fruiting top of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops). The word 'cannabis plant' means any plant of the genus cannabis. It is found out from the record that, prima facie, no quantitative material in the form of ganja, is admitted to be even arrived at during the course of investigation by the investigating authority. Not only that,

considering the definition of ganja, as defined under Section 2(iii)(b), it is the only flowering or fruiting tops of the cannabis plant, that too, excluding the seeds and leaves when not accompanied by the tops, it would become Ganja. Any further finding on the issue, what is seized and recovered, may prejudice the case of the prosecution and for that purpose, I avoid to record the same. However, fact remains that, from the very beginning it was the case of the prosecution that 07 plants of contraband substance 'ganja' weighing 16.860 kg have been recovered from the conscious possession of the applicant. Though, police has filed charge-sheet on the strength of the said material, as submitted by learned advocate for the applicant, the leaves and seeds were not segregated from the flowering or fruiting tops of cannabis plants and therefore the total weight arrived at by the prosecution is not acceptable in law. The trial will take its own time and therefore considering the aforesaid factual aspects of the matter, I am inclined to exercise discretionary powers of bail in favour of the present applicant accused.

6. 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.

7. 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 and the applicant is ordered to be released on regular bail in connection with C.R.No.11217029230244 of 2023 registered with Sami Police Station, District Patan, on executing a personal bond of Rs.25,000/- (Rupees Twenty-five 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 between 11:00 a.m. and 2:00 p.m. till the trial is over;

[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;

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 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. The present application stands allowed accordingly. Rule is made absolute. Direct service is permitted.