

(2021) 02 GUJ CK 0002

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 19158 Of 2020

Sitaram Kunjbihari Adukiya @ Adukia

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 01-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 120B, 420, 465, 467, 468, 471

Citation : (2021) 02 GUJ CK 0002

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : Yogesh Lakhani, Virat G Popat, LB Dabhi

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. Draft amendment is allowed. To be carried out forthwith.
2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being CR No.11210048201414 of 2020 registered with Umra Police Station, Surat for offence under Sections 465, 467, 468, 471, 420 and 120B of the Indian Penal Code.
3. Learned Senior Advocate 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.
4. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. It is submitted that the investigation is still pending and it is a case where

Government has been cheated in a preplanned manner and loss of almost Rs.2 crores has been caused. Learned APP drew attention of the Court to statement of one Mr.Dafda to indicate that the applicant had also joined accused in due course of business.

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. Following aspects are considered:-

I. The FIR is registered on 14.11.2020 for the offence which is alleged to have taken between 2008-09 to 21.10.2020.

II. The applicant is in jail since 18.11.2020.

III. Submission of learned Senior Advocate for the applicant that the applicant was Director of Sanket Media Pvt. Ltd. Only for the namesake,

whereas administration and day-to-day affairs of the company were being looked after by one Mr.Sharma and Mr.Baig.

IV. Submission of learned Senior Advocate for the applicant that the applicant was Director, but only for minority share and was having only 10 shares, i.e. 0.04%.

V. Submission of learned Senior Advocate for the applicant that the applicant is aged 70 years and having age related medical ailments of serious nature.

VI. Submission of learned Senior Advocate for the applicant by drawing attention of this Court to the provisional attachment order dated 04.01.2021

by the Enforcement Directorate, that investigation under the PMLA Act has been initiated, where only accused No.1 is cited as accused whereas in

fact, the applicant is cited as a witness. He drew attention of the Court to para-16.3 of the provisional attachment order in this regard..

VII. No antecedents are reported.

VIII. Learned APP under instructions of IO is unable to bring on record any special circumstances against 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.

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. The applicant is ordered to be released on regular bail in connection with FIR being CR

No.11210048201414 of 2020 registered with Umra Police Station, Surat, on executing a personal bond of Rs.10,000/- (Rupees Ten 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 & shall not obstruct or hamper the police investigation and shall not to play mischief

with the evidence collected or yet to be collected by the police;

(c) surrender passport, if any, to the Trial Court within a week;

(d) not leave the State of Gujarat without prior permission of the Trial Court concerned;

(e) mark presence before the concerned Police Station once in a month for a period of six months between 11.00 a.m. and 2.00 p.m.;

(f) furnish the present address of his 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 Trial 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.

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