

(2023) 12 GUJ CK 0062

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 10251 Of 2023 (For Regular Bail - After Chargesheet)

Sitaram S/O Motilal Dhakad

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 18-12-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(C), 15(C), 29, 37, 67

Citation : (2023) 12 GUJ CK 0062

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Mehul Sharad Shah, HK 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.11211040230055/2023 registered with the Panshiana Police Station, Surendranagar for the offence punishable under Sections 8(C), 15(C) and 29 of the NDPS Act.

2. Learned advocate submitted that the so-called incident has taken place on 24.03.2023, for which, FIR has been lodged on the very same day i.e. on 24.03.2023 and the applicant has been arrested on 31.03.2021 and since then, he is in judicial custody i.e. more than 2 years and 8 months. Learned advocate submitted that now the investigation is completed and after submission of the chargesheet, the present application has been preferred. Learned advocate submitted that on the day of incident, the members of the raiding party have intercepted one truck and during the course of search, they have found contraband articles i.e. poppy straw about 223.360 Kgs. worth of Rs.6,70,000/-

were found in gunny bag and, therefore after fulfillment of all the formalities, the driver and cleaner of the truck were arrested. Learned advocate submitted that during the course of investigation, the statements of those accused i.e. driver and cleaner, were recorded and only on the strength of statement of the co-accused recorded before the IO, the present applicant is arraigned as accused. Learned advocate submitted that on conclusion of the investigation, the concerned IO has submitted chargesheet before the competent criminal court against 7 accused persons, out of which, five accused have been arrested and two accused are yet to be arrested and they have been shown as absconding accused at the time of filing of the chargesheet. Learned advocate submitted that the present applicant is basically belonging to Rajasthan and has no direct or indirect connection with the commission of crime. Learned advocate submitted that so far as the role attributed to the present applicant is concerned, it is alleged that the present applicant has supplied the contraband articles to the accused, who were caught red-handed and the said fact has come on record at the time of recording the statements of the co-accused recorded by the IO. Learned advocate has put reliance upon the decision of the Hon'ble Supreme Court in case of Tofan Singh Vs. State of Tamil Nadu, reported in (2021) 4 SCC 1, wherein the Hon'ble Supreme Court has specifically observed that during the course of investigation, if the IO has recorded the statement of the accused under Section 67 of the NDPS Act, the said statement would not be admissible in eye of law and the evidence available against the present applicant is the statements of the co-accused as well as the telephonic talk of the present applicant with the co-accused, who were caught red-handed and except this, there is no evidence connecting the applicant with the commission of crime. Learned advocate submitted that as per the case of the prosecution, the present applicant was in contact with the co-accused but simply on the basis of the CDR, the present applicant cannot be arraigned as accused. It is, therefore, urged that considering the nature of the offence and the period undergone by the applicant after his arrest, the applicant may be enlarged on regular bail by imposing suitable conditions.

3. Learned APP for the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. Learned APP submitted that the present applicant is the main accused and he has supplied the contraband articles to the co-accused, who were caught red-handed by the members of the raiding party along with contraband articles. Learned APP submitted that the Investigating Officer has collected CDR, from which, it is clearly found out that the present applicant was in constant touch with other co-accused persons and specific role and name of the present applicant has come on surface on the basis of the statement of the co-accused made during the course of investigation. Learned APP submitted that one truck was intercepted by the members of the raiding party and during the course of search and seizure, 230.360 Kgs. contraband article worth of Rs.6,70,000/- have been seized, which would fall under the commercial quantity and, therefore, rigors of Section 37 of the NDPS

Act would come into play and from the evidence available on record, the involvement of the present applicant is found out from the very beginning. It is, therefore, urged that the present application may not be entertained.

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 the present application is preferred after submission of the chargesheet and now the investigation is completed and the applicant is in jail since 31.03.2021 i.e. more than 2 years and 8 months. It is found out from the available record that as per the prosecution case, the role attributed to the present applicant is that he has supplied the contraband articles to the other co-accused, who were caught red-handed on the spot and to connect the applicant with the commission of crime, there is CRD collected by the Investigating Officer, however except that, there is no other evidence connecting the applicant with the commission of crime and the name of the applicant is implicated only on the basis of the statement of the co-accused made before the Investigating Officer. Therefore without entering into the merits or demerit of the matter, I am of the opinion that the present application deserves to be allowed.

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. The applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.11211040230055/2023 registered with the Panshiana Police Station, Surendranagar 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;

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.