

(2021) 04 GUJ CK 0055

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 5215 Of 2021

Sultan Gulab Chauhan

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 20-04-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 120B, 406, 420, 465, 467, 468, 471

Citation : (2021) 04 GUJ CK 0055

Hon'ble Judges : A.J.Desai, J

Bench : Single Bench

Advocate : Ashish M Dagli, P P Majmudar, LB Dabhi

Final Decision : Allowed

Judgement

A.J.Desai, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR No.11196010200062 of 2020 registered with DCB Police Station, Vadodara City, Vadodara for offence under Sections 406, 420, 465, 467, 468, 471 and 120B of the Indian Penal Code.

2. Heard learned advocate Mr. Ashish M. Dagli for the applicant, learned advocate Mr. P.P.Majmudar for the original first informant and learned APP Mr. L.B. Dabhi for the respondent - State.

3. Mr. Ashish Dagli, learned advocate applicant mainly submitted that in the FIR, the original first informant has suppressed relevant aspect and there is reference of only one invoice in the FIR. In fact, the transactions are with regard to two different invoices. He has referred the relevant documents annexed with the memo of the application. It is the case of the applicant that for both the invoices the complainant was required to pay Rs.60 crores to the applicant. However, the complainant has paid total amount of Rs.43 crores and Rs.17 crores are still outstanding. It is also alleged that complainant has forged the documents. In

support of the said contention, he has also referred relevant documents annexed with the compilation. Mr. Dagli, learned advocate has also referred the statements of the concerned witnesses which are placed on record.

4. Thereafter, learned advocate Mr. Dagli would submit that applicant is in jail since 24.07.2020 and now investigation is over and chargesheet is filed.

5. It is further submitted that case is triable by the Court of Magistrate. It is also contended that prior to lodging of the FIR in question, he has filed Commercial Suit No.3 of 2020 against the original complainant. Learned advocate Mr. Dagli submitted that now the alleged forged documents are also recovered by the Investigating Agency during the course of investigation and as the investigation is over, further custody of the applicant is not required. It is, therefore, urged that applicant be enlarged on bail.

6. Learned 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.

7. On the other hand, learned advocate Mr. P.P.Majmudar appearing for the original first informant has opposed this application and referred the relevant documents including the counter of the chargesheet filed by the investigating agency against the applicant. From the said documents and the counter of the chargesheet, it is contended that there is prima facie case made out against the applicant by the prosecution and at this stage prima facie it is revealed that applicant has forged certain documents for which now the chargesheet is filed against him. It is further submitted that as per his information, Enforcement Department has also initiated some proceedings against the applicant. It is further submitted that before the registration of the FIR, the applicant has filed the Commercial Suit with a view to see that he may not be implicated in the FIR, which is to be filed against the applicant and therefore merely because civil proceedings are filed by him against the original first informant, no benefit be given to him. Learned advocate Mr. Majmudar has, therefore, urged that this application may not be entertained.

8. Learned APP Mr. L.B. Dabhi has also referred relevant documents and submitted that prima facie case is made out against the applicant and therefore this Court may not exercise the discretion in favour of the applicant.

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

It is brought to the notice of this Court that the co-accused has been enlarged on bail by a Coordinate Bench vide order dated 01.03.2021 passed in Criminal Misc. Application No. 18441 of 2020 in the case of Javed Hamidbhai Memon v. State of Gujarat.

10. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of

allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

11. This Court has considered following aspects:

- (a) applicant is in jail since 24.07.2020;
- (b) investigation is over and chargesheet is filed;
- (c) case is triable by the Court of Magistrate;
- (d) I have also considered the fact that applicant is recently operated and he was enlarged on temporary bail by the concerned Court which was extended from time to time.
- (e) The alleged forged documents are already in possession of the investigating agency;
- (f) commercial suit is also filed by the applicant against the original first informant prior to lodging of the FIR by the original first informant;
- (g) though it is contended that prosecution has made out prima facie case against the applicant, looking to the facts and circumstances of the present case, this Court is of the view that by imposing certain conditions, discretion is required to be exercised in favour of the applicant.

12. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra Vs. Central Bureau of Investigation, reported in [2012] 1 SCC 40.

13. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being No.11196010200062 of 2020 registered with DCB Police Station, Vadodara City, Vadodara 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;
- [c] surrender passport before the lower court within a week, if not surrendered;
- [d] not leave the India without prior permission of the concerned trial court;
- [e] mark presence before the concerned Police Station between 1st to 10th day 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 the concerned trial court;

14. The aforesaid observations are tentative observations made by this Court while considering the case of the applicant for bail. The same shall not come in the way of the parties in other proceedings which are pending before the concerned Courts. The Commercial Suit as well as other proceedings shall be decided on its own merits.

15. 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.

16. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

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