

(2024) 03 GUJ CK 0088

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - Before Chargesheet)
No. 5642 Of 2024

Sureshbhai @ Jado Rayjibhai Rathod

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 22-03-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Gujarat Prohibition Act, 1949 — Section 65(a), 65(c), 81, 98(2), 116B

Citation : (2024) 03 GUJ CK 0088

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Bharatkumar A Desai, L B Dabhi

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 F.I.R. being C.R.No.I-11207036231117 of 2023 registered with the Kalol Police Station for the offence punishable under Sections 65(a), 65(c), 81, 116-B and 98(2) of the Gujarat Prohibition Act.

2. Learned advocate appearing on behalf of the applicant submits that the present application is filed before submission of Charge-sheet and investigation is yet not concluded. It is submitted that the so called incident occurred on 09.12.2023 and on the same day, F.I.R. is filed and the applicant has been arrested on 13.03.2024 and since then he is in custody. The F.I.R. is filed against two other co-accused persons, those two accused persons have already been considered by the learned Sessions Court and the name of the applicant has come on surface during investigation. It is further submitted that the present applicant is owner of the car wherein the other co-accused persons were riding with contraband prohibited bottles of liquor recovered. He further submits that

the bail of the present applicant accused was not considered by the learned Sessions Court solely on the ground that there are past antecedents against the present applicant. At the time of opposing the bail application of the accused, the prosecuting agency has placed reliance on 12 offences registered against the present applicant accused but out of 12 offences, in 7 offences, order of acquittal was passed. Upon instructions, he further submitted upon instruction that as on today, only two offences are pending against the present applicant accused. It is submitted that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

3. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.

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 considered the allegations levelled against the applicant and the role played by the applicant, the present application deserves consideration. It is found out that the present application is preferred before submission of Charge-sheet and the applicant is in jail since 13.03.2024 till the offences are exclusively triable by the Court of Magistrate. Other co-accused have already been considered by the learned Sessions Court.

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 F.I.R. being C.R.No.I-11207036231117 of 2023 registered with the Kalol Police Station, 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 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. Direct service is permitted.