

(2023) 12 GUJ CK 0033

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 1140 Of 2022

Tofan Pitvas Swain

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 11-12-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(C), 20(C), 29

Citation : (2023) 12 GUJ CK 0033

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : BC Dave, Manan Mehta

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.11214068200060/2020 registered with the Kim Police Station, Surat Rural for the offence punishable under Sections 8(C), 20(C) and 29 of the NDPS Act.

2. Learned advocate for the applicant submitted that the so-called incident has taken place on 02.02.2020, for which, FIR has been registered on 02.02.2020 and on the very same day i.e. on 02.02.2020, the applicant has been arrested and since then, he is in judicial custody i.e. since last more than 2 years and 10 months and in fact, the applicant is wrongly arraigned as accused in the aforesaid commission of crime. It is submitted that now the investigation is completed and after submission of the chargesheet, the present application is preferred. Learned advocate submitted that in the present case, the muddamal Ganja weighing 717.670 Kgs. have been recovered from the possession of co-accused, Damru and the applicant is arraigned as accused in the aforesaid commission of crime only on the basis of the statement made by the co-accused

and except this, there is no other material connecting the applicant – accused with the commission of crime. Learned advocate submitted that the applicant is aged about 20 years and if will not be granted bail then, his future will be ruined. It is, therefore, urged that considering the nature of the offence, 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. It is submitted that the role of the present applicant is clearly spelt out from the papers of the chargesheet and, hence, the present application may not be entertained. Learned APP submitted that in the present case, muddamal Ganja weighing 717.670 Kg. was recovered by the members of the raiding party at the time of carrying out raid, which is commercial quantity. Learned APP submitted that in the present case, the concerned Investigating Officer has collected CDR and from which, it is found out that the applicant – accused was in constant touch with other co-accused and thus, the involvement of the present present applicant – accused in the commission of crime is established by the prosecution agency. It is also submitted that the applicant is resident of Orissa State and, hence, his presence may not be secured if he is released on bail. 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.

6. 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 02.02.2020 i.e. more than 2 years and 10 months. It is found out from the record that the applicant is arraigned as accused only on the basis of the statement of the co-accused made before the IO and there are CDR available on record, which connect him with the commission of crime and except this, there is no other available on record connecting him with the alleged commission of crime. Therefore considering the above factual aspects, the present application deserves to be allowed.

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 as well as in case of Satender Kumar Antil v. Central Bureau of Investigation & Anr. reported in (2022) 10 SCC 51.

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 the FIR being C.R. No.11214068200060/2020 registered with the Kim Police Station, Surat Rural 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;

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 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.

11. 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.

12. The present application stands allowed accordingly. Direct service is permitted.