

(2024) 04 GUJ CK 0032

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Successive Regular Bail - Before Chargesheet) No. 6708 Of 2024

Udaysing Nathusing Raut

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-04-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Gujarat prohibition Act, 1949 — Section 65(A)(E), 81, 83, 98(2), 116(b)

Citation : (2024) 04 GUJ CK 0032

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Kishan H Daiya, Hardik S Soni

Final Decision : Allowed

Judgement

@JUDGEMENT- 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 FIR being C.R. No.11210019240034 of 2024 registered with the Ichchapore Police Station, Surat City, for the offence punishable under Sections 65(A)(E), 81, 83, 98(2) and 116(b) of the Prohibition Act.

2. Learned advocate appearing on behalf of the applicant submits that the present application is preferred after submission of charge-sheet. Learned advocate submitted that the so-called incident has taken place on 16.01.2024, for which the FIR has been lodged on the same date i.e. on 16.01.2024. Learned advocate submitted that as per the case of prosecution, the liquor came to be found from the vehicles and as the applicant is the owner of the vehicle, he was falsely implicated in the alleged offence. Learned advocate further submits that the investigation has been already completed and the charge-sheet has been

filed. Learned advocate further submits that nothing is to be recovered or discovered from the applicant. Learned advocate submitted that except the above role, no other role is attributed to him. Thereafter, subsequently, he was arraigned and ultimately, arrested on 24.01.2024 and since then, he is in judicial custody. Learned advocate submit that the applicant – accused doing the driving and other accused has used his vehicle in alleged offence and the applicant do not have any connection with the liquor, which was found from his vehicle. Therefore, there is no chance to tamper with the documents. He further submits that all the offences are exclusively triable by the Court of Magistrate. Considering the same, prima-facie, it can be said that it would take considerable long period of time to conclude the proceedings. Learned advocate submits 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. Considering the role attributed, at the time of commission of offence, 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 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 24.01.2024. All the offences are exclusively triable by the court of Magistrate and there is no recovery or discovery from the applicant - accused. I have considered the role attributed to the present applicant at the time of commission of crime. Therefore, considering the above factual aspects and on the ground of parity, 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 and the applicant is ordered to be released on regular bail in connection with FIR being C.R. No.11210019240034 of 2024 registered with the Ichchapore Police Station, Surat City, 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.