

(2020) 08 GUJ CK 0225

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 11281 Of 2020

Ujjvalbhai Jayantibhai Jadav

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 26-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173(8), 439
Indian Penal Code, 1860 — Section 114, 465, 466, 471

Citation : (2020) 08 GUJ CK 0225

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Jimit P Shah, Laxmansinh M Zala, HK Patel

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This Application is filed by the Applicant - Accused under Section 439 of the Code of Criminal Procedure for enlarging him on Regular Bail in connection with I-C.R. No.16/2019 registered with Limbdi Police Station, District-Dahod for the offences punishable under Sections 465, 466, 471 and 114 of the Indian Penal Code.

2. Heard learned Advocate Mr.Laxmansinh M. Zala for the Applicant and learned APP Mr.H.K. Patel for the Respondent-State through Video Conference.

Facts of the case

3. The brief facts of the case are that the complainant in his complaint has alleged that one Kamleshbahi (Date Operator) entered a forged entry of birth of son of accused No.2- Kakadiyabhai in the register with a view to show the son of accused No.2 as juvenile accused in one other offence registered under POCSO Act. During investigation the name of the applicant was revealed and he was arrested.

Submission of the Parties:

4. Learned Advocate for the Applicant / Accused has submitted that in the present case, pursuant to the papers, F.I.R. and others, it appears that F.I.R. was originally registered on 11.02.2019 and the first accused was arrested on 26.05.2020 when the charge-sheet was filed. Thereafter, the juvenile accused and the father was arrested on 09.06.2020. The present accused has always co-operated with Investigating Agency, wherein on the first time on 09.01.2019 his statement was recorded and subsequently, on 07.10.2019 his further statement was recorded. So every time he was available and the panchnama was carried on 07.10.2019. In the present case, the offences are under Sections 465, 466, 471 and 114 of the Indian Penal Code where maximum punishment is upto 7 years and triable by Judicial Magistrate First Class. It was further submitted that the Applicant Accused is innocent as he has not taken part in the offence as alleged. He has family roots in the society and therefore, he is not likely to flee away from justice. That he will abide by whatever conditions imposed by the Hon'ble Court. He has further vehemently submitted that there is no direct involvement of the Applicant Accused in the present case so far as allegation is concerned. There are no antecedents against the Applicant Accused. He has therefore prayed that discretion may kindly be exercised and grant bail to the Applicant Accused.

5. Per contra, learned APP Mr.H.K. Patel for the respondent - State has heavily opposed the present application looking to the nature and gravity of offence, involvement of the Applicant / Accused and submitted that the present applicant has made forged certificate. Not only that, but the same is used in another criminal proceeding in POCSO Court where on the basis of the said certificate the accused was enlarged on bail. Therefore, prima facie offence is committed and therefore, the applicant is not required to be enlarged on regular bail. The learned APP has further heavily submitted that investigation is in progress under Section 173 (8) of Code of Criminal Procedure and therefore, till the completion of investigation under Section 173(8) Code of Criminal Procedure, the applicant may not be enlarged on bail. He further submitted that if the Hon'ble Court is inclined to grant bail then in such case strict conditions may be imposed to secure the presence of the Applicant Accused.

Merits of the Case:

6. This court has considered the following aspects:

(a) That in the present case it is an admitted fact that the Applicant accused has come with this Application after the charge-sheet is filed.

(b) That even if it is a prima facie case, then also as such there is no antecedent.

(c) Further as per catena of decisions of Hon'ble Supreme Court, there are mainly 3 factors which are required to be considered by this court i.e. prima facie case, availability of Applicant accused at the time of trial and tampering and hampering with the witnesses by the accused.

(d) That the learned Advocate for the Applicant has submitted that the Applicant Accused is not likely to flee away.

(e) That the Applicant Accused is in custody since 13.07.2020.

(f) The charges levelled against the present applicant are under Sections 465, 466, 471 and 114 of the Indian Penal Code where the maximum punishment is upto 7 years. Further the investigation is pending under Section 173(8) of Code of Criminal Procedure may not sole ground for denying bail.

(g) The law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. C.B.I. Reported in (2012) 1 SCC 40, wherein it is held that bail is a rule, jail is an exception.

(h) By granting discretion, accused person would not get the guiltiness, on the contrary he has to face the trial, only his liberty is curtailed and therefore this may be a fit case of trial by way of imposing strict conditions.

7. Having heard the learned Advocates for the parties and perusing the record produced in this case as well as taking into consideration the facts of the case, nature of allegations, gravity of accusation, availability of the Applicant Accused at the time of Trial etc. and the role attributed to the present Applicant accused, the present Application deserves to be allowed and accordingly stands allowed. The Applicant Accused - UJJVALBHAI JAYANTIBHAI JADAV is ordered to be released on bail in connection with F.I.R. being I-C.R. No.16/2019 registered with Limbdi Police Station, District Dahod, on executing a personal bond of Rs.25,000/- with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that he shall:

(a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer or tamper with the evidence.

(b) maintain law and order and not to indulge in any criminal activities.

(c) furnish the documentary proof of complete, correct and present address of his residence to the Investigating Officer and to the Trial Court at the time of executing the bond and shall not change his residence without prior permission of the trial Court.

(d) provide his contact numbers as well as the contact numbers of the sureties before the Trial Court. In case of change in such numbers inform in writing immediately to the trial Court.

(e) file an affidavit stating his immovable properties whether self acquired or ancestral with description, location and present value of such properties before the Trial Court, if any.

(f) not leave India without prior permission of the Trial Court.

(g) surrender passport, if any, to the Trial Court within a week. If he does not

possess passport, he shall file an Affidavit to that effect.

(h) shall mark his presence twice in a month before the concerned Police Station till commencement of trial between 11.00 a.m. to 1.00 p.m.

(i) shall maintain all the rules and regulations framed by the Municipality regarding contemporary status of corona virus/Covid-19, State Government or by any competent authority, including social distancing.

8. Bail bond to be executed before the Trial Court having jurisdiction to try the case. It would be open for the Trial Court concerned to give time to furnish the solvency certificate if prayed for.

9. If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities will release the Applicant forthwith only if he is not required in connection with any other offence for the time being.

10. Rule is made absolute. The Registry is directed to communicate this order by Fax / by E-mail to the concerned Court / Authority.