

(2020) 10 GUJ CK 0032
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 14386 Of 2020

Vijaybhai Harjibhai Makwana

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 28-10-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 120(b), 409, 406, 420, 465, 467, 468, 471

Citation : (2020) 10 GUJ CK 0032

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Sikander Saiyed, Krina Calla

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. Heard Mr. Sikander Saiyed, learned counsel for the applicant and Ms. Krina Calla, learned APP for the respondent - State through Video Conferencing.

2. Rule. Learned APP waives service of Rule.

3. By this application filed under Section 439 of the Code of Criminal Procedure, 1973, the Applicant is seeking his release on regular bail in a crime, where he is charged in connection with the FIR being C.R.No.11201016200002 of 2020 registered at CID Crime Surat Zone Police Station, Dist. Surat City, punishable under Sections 409, 406, 420, 465, 467, 468, 471 and 120(b) of IPC.

4. Learned counsel for the applicant submitted that, the accused Avinash contacted the present applicant for purchasing machinery and obtained quotation and thereafter, accused Avinash obtained loan from the bank by furnishing the same. Therefore, the applicant has not played any role, nor he contacted the manager of the Bank.

5. On the other hand, learned APP appearing for the respondent - State

vehemently submits that, looking to the facts as well as the allegations made against the applicant, no discretion would required to be exercised.

6. In the facts and circumstances of the case and considering the nature of allegations and role of applicant, this Court is of the opinion that, discretion is required to be exercised to enlarge the applicant on regular bail without much discussion the discretion in favour of the applicant is required to be exercised and while exercising the jurisdiction, this Court has considered the following aspects :-

(i) the applicant is in custody since 25.08.2020;

(ii) the FIR is registered on 24.08.2020 for the offence which is alleged to have taken place during the year 2016 to 2020;

(iii) learned advocate for the applicant, upon instructions, stated that so far monetary liability is concerned, the applicant is ready and willing to deposit Rs.4,00,000/- (Rs. Four Lakhs only) on or before 31.01.2021 before the trial Court;

(iv) the learned APP has confirmed that the alleged benefit received by the applicant to the tune of Rs.4 lakhs only subject to outcome of the investigation;

(v) looking to nature of the allegation, the cause for filing FIR and investigation based on documentary evidence;

7. In view of the aforesaid facts, without discussing the evidence in detail, this Court, prima facie, is of the opinion that, this is a fit case to exercise the discretion and enlarge the applicant on regular bail. Hence, present application is allowed and the applicant is ordered to be released on regular bail in connection with the FIR being C.R.No.11201016200002 of 2020 registered at CID Crime Surat Zone Police Station, Dist. Surat City, on executing a personal bond of Rs.10,000/- (Rupees Ten thousands only), with one surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that he shall;

Nos

Conditions

(a)

not take undue advantage of liberty or misuse liberty;

(b)

not act in a manner injuries to the interest of the prosecution;

(c)

surrender passport, if any, to the lower court within a week;

(d)

not leave India without prior permission of the Sessions Judge concerned;

(e)

furnish latest 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 trial Court;

(f)

shall mark his presence before the concerned police station in the first week of every month till filing of charge-sheet.

(g)

The applicant shall deposit Rs.4,00,000/- (Rupees Four Lakhs Only) on or before, 31.01.2021 before the trial Court, which shall be invested in cumulative in FDR in any nationalized Bank and the same shall be renewed from time to time till the trial is over.

(h)

After releasing the applicant, the applicant shall file an undertaking before the concerned Court, to the effect that he shall deposit Rs.4,00,000/- on or before 31.01.2021 within one week.

8. 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 trial Court concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the learned 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. At the trial, learned 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. Rule is made absolute to the aforesaid extent.

9. Registry to send a copy of this order to the concerned Jail Authority as well as Id. Sessions Court forthwith through fax and e-mail.