

(2024) 02 GUJ CK 0063
In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - After Chargesheet) No. 2344 Of 2024

Vinayak S/O. Nageshwar Indrabhan Yadav

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 16-02-2024

Acts Referred:

Gujarat Mineral (Prevention of Illegal Mining, Storage and Transportation) Rules, 2017 — Rule 3, 5, 7, 10, 21
Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 120B, 186, 376
Mines And Mineral (Development And Regulation) Act, 1957 — Section 4(1), 4(1)(a), 21(1), 21(5), 22

Citation : (2024) 02 GUJ CK 0063

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Dhruti Pandya, Kruti M Shah, Jirga Jhaveri

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. Rule returnable forthwith. Learned APP waives service of notice of rule for and on behalf of the respondent-State.

2. 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.11211045230462 of 2023 registered with the Sayla Police Station, District Surendranagar for the offence punishable under Sections 379, 186, 114 and 120-B of the IPC, Sections 4(1) and 4(1)(a) of the Mines and Mineral (Development and Regulation) Act, 1957 and Rules 3, 5, 7, 10 and 21 of the Gujarat Mineral (Prevention of Illegal Mining, Storage and Transportation) Rules, 2017.

3. Learned advocate Ms. Dhruti Pandya for learned advocate Ms. Kruti M. Shah appearing for the applicant has submitted that the applicant-accused came to be

arrested on 19.12.2023 and since then he is in jail. Learned advocate Ms. Pandya has also submitted that the investigation has already been completed and charge-sheet has also been filed. Learned advocate Ms. Pandya has further submitted that all the offences are exclusively triable by the Court of Magistrate except the offence pertaining to the Mines and Minerals (Development & Regulation) Act, 1957. Learned advocate Ms. Pandya has further submitted that the present applicant-accused is the driver of the truck and under the instructions issued by the owner of the truck, he has acted in a particular manner. The applicant is salaried employee. Learned advocate Ms. Pandya has also submitted that there is specific bar under Section 22 of the Mines & Minerals (Development and Regulation) Act, 1957 that a complaint is required to be registered by a person authorised in this behalf by the Central Government or the State Government before the Court of Sessions and, therefore, the present FIR is not maintainable qua the offences under the said Act. Learned advocate Ms. Pandya has also submitted that certain other accused persons have approached the Hon'ble High Court by filing a quashing petition and a Coordinate Bench of this Court has stayed the proceedings qua the provisions under the Mines & Minerals (Development and Regulation) Act, 1957. Learned advocate Ms. Pandya has further submitted that the present applicant-accused is merely a driver and the owner of the truck has not been shown as the accused. Learned advocate Ms. Pandya has further submitted that if the offence under the provisions of the Mines & Minerals (Development and Regulation) Act, 1957 would not be taken into consideration as the same is barred by Section 22 of the said Act, all other offences are Magistrate Triable Offences. It is further submitted that uptill now, no private complaint has been registered by the concerned Mining Department before any competent court. Under the circumstances, learned advocate Ms. Pandya for the applicant prays that the applicant may be enlarged on bail on any suitable terms and conditions.

4. The learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. Learned APP has submitted that the present applicant-accused has been found from the place of occurrence along with truck, machinery, excavators and other equipments. It is found out during the course of investigation that the Government exchequer has suffered a huge financial loss due to the said excavation work carried out through illegal digging and mining activities by the applicant-accused. Learned APP has fairly conceded that there was a specific bar under Section 22 of the Mines & Minerals (Development and Regulation) Act, 1957 and as per the express provisions of the said Act, a private complaint is required to be registered by a person authorised in this behalf by the Central Government or the State Government. Here in the case on hand, no action has been taken by the Mining Department during that period of five years against the culprits by registering the complaint and, therefore, considering the above stated factual aspects, the Court may pass appropriate order.

5. The learned advocates appearing on behalf of the respective parties do not

press for further reasoned order.

6. 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. This Court has also considered the following aspects;

a) That the investigation has already been completed and charge-sheet has also been filed;

b) That the applicant-accused is in judicial custody since 19.12.2023;

c) That except the offence under the provisions of the Mines & Minerals (Development & Regulation) Act, 1957, all the offences are Magistrate Triable Offences;

d) That the applicant-accused is merely a driver of the truck and the owner of the truck has not been arraigned as the accused;

e) That the proceedings arising out of the same FIR has already been stayed only qua the offence under Sections 4(1), 4(1)A, 21(1) and 21(5) of the Mines & Minerals (Development and Regulation) Act, 1957 and Rules 3 and 21 of the Gujarat Mineral (Prevention of Illegal Mining, Storage and Transportation) Rules, 2017 by the Coordinate Bench of this Court in a quashing petition filed by the other co-accused.

f) Considering the role attributed to the applicant-accused and laxity in registering the complaint by the Mining Department, I am inclined to exercise discretion in favour of the applicant-accused;

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.

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 and the applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.11211045230462 of 2023 registered with the Sayla Police Station, District Surendranagar, 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 injuries 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 Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter.

11. 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.

12. 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. Rule is made absolute to the aforesaid extent.

Direct service is permitted.