

Nabi @ Nabo Rahimnbhai Jadav Vs State Of Gujarat

Court: Gujarat High Court

Date of Decision: Oct. 16, 2023

Acts Referred: Code Of Criminal Procedure, 1973 " Section 439

Indian Penal Code, 1860 " Section 420, 465, 467, 468, 471

Arms Act, 1959 " Section 25(1a)(1b), 29

Hon'ble Judges: M. R. Mengdey, J

Bench: Single Bench

Advocate: L G Sudani, Rajan J Patel, L.B.Dabhi

Final Decision: Allowed

Judgement

M. R. Mengdey, J

1. The Applicant has filed this Application under Section 439 of the Code of Criminal Procedure for enlarging the Applicant on Regular Bail in

connection with FIR No. 11191045230777/2023 registered with Sola Police Station, Ahmedabad City for the offences punishable under Sections 420,

465, 467, 468, 471 and 120B of the Indian Penal Code and Sections 25(1-a)(1-b) and 29 of the Arms Act.

2. Heard learned Senior Advocate Mr. Shalin Mehta appearing with learned Advocate Mr. Prateek S. Bhatia. Learned Senior Advocate Mr. Shalin

Mehta has submitted that the Applicant has not been named in the FIR. The present Applicant had purchased a fire arm from the coaccused namely

Prateek Kumar Ishwarbhai Chaudhary along with the licence. At the time of purchase, the Applicant was not aware that the licence, which was

provided to him by the said Prateek Chaudhary was a forged one. The Applicant has not played any role in forgery of the said arm licence. He

submitted that as soon as the present Applicant came to know that the arm licence provided to him by the coaccused was forged, the Applicant has

surrendered the fire arm to the concerned authorities. Considering the same, the Applicant cannot be termed as accused but he is victim to the

coincidence. He submitted that there are no antecedents against the present Applicant. He therefore submitted to allow the present Application and

enlarge the Applicant on bail subject to suitable conditions.

3. The Application is opposed by learned APP Mr. L.B.Dabhi inter alia contending that for the purpose of procuring the licence for fire arms the

Application is required to be made to the concerned authorities after following the necessary procedure and after payment of requisite fees. The

present Applicant has neither followed the said procedure nor has he paid any fees for the said licence. The Applicant had procured the fire arm

from the coaccused by paying him some amount. He therefore submitted to dismiss the present Application.

4. Heard learned Advocates for the parties and perused the record.

5. As per the case of the prosecution, the police authorities had received some secret information that some person was dealing in illegal fire arms in

his motorcar. Having seen the said motorcar the same was intercepted and the coaccused Prateek Chaudhary was found to be driving the said vehicle

and illegal fire arm was also found in his possession. Upon inquiry and investigation, it was revealed that the said coaccused had sold 9 to 10 illegal fire

arms to various persons. On the basis of the said information the present Applicant was apprehended. The role attributed to the present Applicant is to

the effect that he had purchased the fire arm from the present Applicant along with licence which was subsequently found to have been forged. The

material available on record does not indicate about the Applicant having forged any such licence. The record also indicates that having come to know

that the licence for the fire arm in question was a forged one, the Applicant had surrendered his fire arm. There are no antecedents against the

present Applicant.

6. This court has also considered the following aspects:

(a) 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.

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

(c) That the Applicant is in custody since 13.8.2023.

(d) 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.

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. This Court has also gone through the FIR and

police papers and also the earlier order passed by the learned Sessions Court where the learned Sessions Judge has disallowed the bail Application at

initial stage. The Applicant Accused is ordered to be released on bail in connection with the aforesaid FIR on executing a personal bond of Rs.10,000/-

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 residence to the Investigating Officer and to the Trial Court at the time

of executing the bond and shall not change the residence without prior permission of the trial Court.

(d) provide 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 the Applicant does not possess passport, shall file an Affidavit to that effect.

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 the Applicant is not required in connection with any other offence for the time

being.

10. At the trial, the concerned trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

11. Rule is made absolute. Direct service permitted.