
Akshay @ Giri Suryakant Dudrejiya Vs State Of Gujarat**R/Criminal Misc.Application (For Regular Bail - After Chargesheet) No. 16288 Of
2023**

Court: Gujarat High Court**Date of Decision:** Dec. 1, 2023**Acts Referred:**

Code Of Criminal Procedure, 1973 " Section 439#Gujarat Control Of Terrorism And Organised Crime Act, 2015 " Section 2(1)(c), 2(1)(d), 2(e), 2(f), 3(1), 3(2), 3(4), 3(5), 4

Hon'ble Judges: Divyesh A. Joshi, J**Bench:** Single Bench**Advocate:** A A Zabuawala, Manan Mehta**Final Decision:** Allowed

Judgement

Divyesh A. Joshi, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regularbailinconnectionwith

C.R.No.11213015201549 of 2020 registered with Gondal City Police Station, District Rajkot Rural for the offence punishable under sub-sections (1)

and (2) of Section 3(1), Sections 3(2), 3(4), 3(5) and 4 of the Gujarat Control of Terrorism and Organised Crime Act, 2015 (hereinafter referred to as

the "GUJCTOC Act", for short).

2. Learned Advocate Mr. Zabuawala appears for the applicant accused submits that the so-called incident is occurred on 12.11.2020 and on the same

day, FIR has been filed against the accused persons. The present applicant accused has been arrested on 14.11.2020 and since then he is in judicial

custody. The investigation is already completed and after submission of charge-sheet, present bail application is preferred. Learned advocate Mr.

Zabuawala has submitted that at the time of submission of charge-sheet, the investigating officer has put emphasis upon two offences registered

against the present applicant accused and it is found out from the compilation of charge-sheet papers that those two offences were registered in the

year 2016 and those offences are pending before the competent Court for adjudication. Learned advocate Mr. Zabuawala has further submitted that

after the enactment of the GUJCTOC Act, not a single complaint has been registered against the present applicant accused. Learned advocate Mr.

Zabuawala has further submitted that it is alleged against the present applicant accused that he has identified certain parcels of land and after

collecting the papers pertaining to the disputes of the said land he used to forward those set of documents to the main accused persons and on the

strength of the said documents and materials main accused persons have acted in a particular manner. Except that there is no other role attributed to

the present applicant accused. Learned advocate Mr. Zabuawala submits that without touching the merits of the case, simply on the basis of the

period of incarceration spent by the applicant accused, which is more than 3 years, bail application of the applicant accused is required to be

entertained.

3. Learned advocate Mr. Zabuawala has placed reliance upon the order dated 02.09.2022 rendered in Criminal Appeal No.1404 of 2022 in the case of

Shivrajbhai Rambhai Vichhiya v. the State of Gujarat by the Hon'ble Apex Court and submitted that though the said accused was having history

of criminal antecedents of 10 cases, only on the ground of period of incarceration undergone by the said accused person, the said accused has been

enlarged on bail by the Hon'ble Apex Court.

4. Learned advocate Mr. Zabuawala has also placed reliance upon the decision rendered by the Hon'ble Apex Court in the case of State of

Gujarat v. Sandip Omprakash Gupta in Criminal Appeal No.2291 of 2022 and relied upon the observations made in para 51(g) of the said decision.

Learned advocate Mr. Zabuawala has further submitted that the provisions of Section 2(1)(c) of the GUJCTOC Act are pari materia to the provisions

of Section 2(1)(d) of the Maharashtra Control of Organised Crime Act, 1999.

5. Learned advocate Mr. Zabuawala has further submitted that in number of cases the Hon'ble Supreme Court has recently released the accused

persons on bail wherein the accused persons have remained in jail for more than two and half years. Thus, when the present applicant accused is also

in judicial custody since last more than 3 years, the bail application of the applicant may be entertained without touching the merits and demerits of the

case and he may be enlarged on bail by imposing suitable terms and conditions. Learned advocate Mr. Zabuawala further submits that there are

number of witnesses cited in the compilation of charge-sheet papers and it would take considerably long time to conclude the trial and the applicant

accused is in custody since 14.11.2020 and for indefinite period he cannot be kept behind the bars and therefore also the bail application of the

applicant may be considered.

6. Learned APP Mr. Manan Mehta has objected present bail application with vehemence and submitted that role of the present applicant accused is

clearly established from the compilation of charge-sheet papers. Learned APP Mr. Mehta further submits that applicant accused is the member of an

organized crime syndicate run by the main accused person Nikhil Donga and said fact is clearly established from the papers of the charge-sheet.

Moreover, during the course of investigation, CDRs were also collected by the investigating officer which shows that the applicant accused was in

constant touch with all other accused persons including Nikhil Donga. Learned APP further submits that when the main accused person Nikhil Donga

was behind the bars, the applicant accused sent tiffin from his home to the said accused person. Learned APP has referred to the CDR report and

submitted that the applicant accused was actively connected with all the accused persons including the main accused person Nikhil Donga. Learned

APP further submits that the role of the present applicant accused is graver than the other accused persons and therefore he cannot claim parity. The

learned APP read the statements of witnesses and submitted that the applicant accused is an active member of the organized crime syndicate.

Learned APP also referred to and relied upon Sections 2(e) and 2(f) of the GUJCTOC Act and submitted that prima facie case is made out against

the applicant accused and there are all chances that at the end of the trial he will be convicted and therefore considering the overall facts and

circumstances of the present case and the gravity of the offence, bail application of the applicant may not be entertained.

7. I have heard the learned advocates appearing on behalf of the respective parties. I have perused the police papers as well as other documents

produced by the applicant along with the memo of the application. It is found out from the record that the so-called incident is occurred on 12.11.2020

and on the same day, FIR has been filed against the accused persons. The present applicant accused has been arrested on 14.11.2020 and since then

he is in judicial custody. The investigation is already completed and after submission of charge-sheet, present bail application is preferred. Before

adverting to the issue involved in the present application, at this juncture, I would like to refer to the following decisions rendered by the Hon'ble

Supreme Court, relied on by learned advocate Mr. Zabuawala for the applicant.

The Hon'ble Apex Court in the case of Shivrajbhai Rambhai Vichhiya (supra), while enlarging the concerned appellant accused on bail, observed

as under:

“Leave granted.

Heard learned counsel for parties.

We would not like to record any detailed order at this stage which may prejudice the either of the sides, but suffice to say that out of 10 cases alleged

against the appellant, there is one serious case which is stated to be of a murder where the appellant is already enjoying anticipatory bail.

The appellant has been held under the Gujarat Control of Terrorism and Organized Crime Act, 2015 and he has already spent about two and a half

years in custody.

The Hon'ble Apex Court in the case of Sandip Omprakash Gupta (supra) has, in para 51(g), observed as under:

“(g) However, we need to clarify something important. Shiva alias Shivaji Ramaji Sonawane (supra) dealt with the situation, where a person

commits no unlawful activity after the invocation of the MCOCA. In such circumstances, the person cannot be arrested under the said Act on

account of the offences committed by him before coming into force of the said Act, even if, he is found guilty of the same. However, if the person

continues with the unlawful activities and is arrested, after the promulgation of the said Act, then, such person can be tried for the offence under the

said Act. If a person ceases to indulge in any unlawful act after the said Act, then, he is absolved of the prosecution under the said Act. But, if he

continues with the unlawful activity, it cannot be said that the State has to wait till, he commits two acts of which cognizance is taken by the Court

after coming into force. The same principle would apply, even in the case of the 2015 Act, with which we are concerned.

It is an admitted fact that the investigating agency has taken into consideration two FIRs registered against the present applicant accused in the year

2016 and after coming into force the GUJCTOC Act on 01.12.2019, not a single FIR has been registered against the present applicant accused.

Without discussing anything on merits and demerits of the case and considering the ratio enunciated by the Hon'ble Apex Court in the aforesaid

decisions and considering the period of incarceration undergone by the applicant accused which is more than 3 years, I am inclined to consider the

present bail application.

8. 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.

9. 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.

10. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with C.R.No.11213015201549 of

2020 registered with Gondal City Police Station, District Rajkot Rural, 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;

11. 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.

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.

13. The present application stands allowed accordingly. Direct service is permitted.