

(2024) 02 GUJ CK 0034**Gujarat High Court**

Case No: R/Criminal Misc.Application (For Regular Bail - After Chargesheet) No. 9987 Of
2023

Vaibhavbhai Dipakbhai Rathod

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision: Feb. 7, 2024

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 439
- Indian Penal Code, 1860 - Section 34, 201, 120(B), 302
- Gujarat Police Act, 1951 - Section 34
- Evidence Act, 1872 - Section 25, 26

Hon'ble Judges: Divyesh A. Joshi, J

Bench: Single Bench

Advocate: BC Dave, Bhargav Pandya

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.11212051210768 of 2021 registered with the Surat Railway Police Station, Surat City of the offence punishable under Sections 302, 201, 120(B) and 34 of the IPC and Section 135 of the G.P. Act.

3. Learned advocate appearing for the applicant has submitted that the applicant-accused was arrested on 19.06.2021 and since then he is in jail. Learned advocate for the applicant has also submitted that the investigation has already been completed and charge-sheet has also been filed. Learned advocate for the applicant has submitted that the entire case of the prosecution hinges upon circumstantial evidence and there is no independent eye-witness who had witnessed the alleged incident. The FIR came to be lodged

against unknown persons and during the course of investigation on the basis of suspicion, the present applicant-accused has been implicated in the present offence. The entire story narrated by the police is concocted one. It is submitted that at the time of rejecting the bail application, the trial court has taken into consideration the story narrated by the applicant-accused before the Investigating Officer while in custody and it is settled proposition of law that any kind of confession made by the accused before the police while in the custody of a police is not relevant and would be hit by Sections 25 and 26 of the Evidence Act. Under the circumstances, learned advocate 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 considering the role attributed to the applicant-accused, this is a fit case wherein discretionary power of this Court is not required to be exercised in favour of the applicant-accused.

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 jail since 19.06.2021;

c) That the applicant-accused has not been named in the FIR and has been implicated in the presence offence on the basis of suspicion;

d) That the entire case of the prosecution hinges upon circumstantial evidence and the confessional statement made by the accused before the Investigating Officer while in custody does not have any relevance in the eye of law and would be hit by Sections 25 and 26 of the Indian Evidence Act;

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.11212051210768 of 2021 registered with the Surat Railway Police Station, Surat City, 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.