IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 19039 of 2020

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IMRAN HUSEN SAIYED
Versus
STATE OF GUJARAT

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Appearance:
RAFIK LOKHANDWALA(5590) for the Applicant(s) No. 1
MS MOXA THAKKAR, APP (2) for the Respondent(s) No. 1

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CORAM: **HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

Date : 16/12/2020

ORAL ORDER

1. This application is filed by the applicant – accused under Section 439 of the Code of Criminal Procedure for enlarging the applicant on Regular Bail in connection with C. R. No. 11210005201286 of 2020, registered with Athwalines Police Station, District: Surat for the offences punishable under sections 65(E), 81, 98(2) etc. of the Prohibition Act.

2. Heard learned advocate Mr. Rafik Lokhandwala for the applicant and learned APP Ms. Moxa Thakkar for the respondent - State through Video Conference.

3. Rule. The learned APP waives service of notice of rule on behalf of the respondent – State.

Submissions of the Parties:

4. The learned advocate for the applicant - accused has submitted that the applicant - accused is an innocent person and falsely implicated in the offence in question. It is submitted that original accused No. 1 in

the case has been already enlarged on bail by the learned Magisterial Court. Further, the investigation is almost over and hence, there may not be further need of custodial interrogation. Further, the applicant has family roots in the society and therefore, the applicant is not likely to flee away from justice. That the applicant will abide by whatever conditions imposed by the Court. The learned advocate for the applicant has further vehemently submitted that there is no direct involvement of the applicant - accused in the present case so far as allegation is concerned. It is, therefore, prayed that discretion may kindly be exercised and grant bail to the applicant - accused.

5. Per contra, learned APP has vehemently argued that investigation is going on and charge-sheet in the case is yet to be filed and hence, there is possibility of tampering and hampering with the evidence. Therefore, it is urged that discretion may not be exercised and ultimately, the learned APP has opposed the grant of bail looking to the nature and gravity of offence, involvement of the applicant - accused. The learned APP has further submitted that if the Court is inclined to grant bail then, in such case, strict conditions may be imposed to secure the presence of the applicant - accused.

Merits of the Case:

6. This court has considered the following aspects:

(a) the investigation is over and charge sheet is filed;

(b) original accused No. 1 has been enlarged on bail by the learned Magisterial Court;

(c) further as per the catena of decisions of Hon'ble Apex Court, there are mainly three 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;

(d) that the learned advocate for the applicant has submitted that the applicant - accused is not likely to flee away;

(e) that the applicant - accused is in custody since 02.11.2020;

(f) 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,** wherein it is held that bail is a rule and jail is an exception and there should not be pre-trial punishment.

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. Applicant - accused - **IMRAN HUSEN SAIYED** is ordered to be released on regular bail in connection with above-referred FIR, on executing a personal bond of **Rs.10,000/- (Rupees Ten thousand only)** with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that the applicant 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 his residence to the Investigating Officer and to the trial Court at the time of executing the bond and shall not change his residence without prior permission of the trial Court;

(d) provide his 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, before the trial Court within a week. If he does not possess passport, he shall file an affidavit to that effect;

(h) mark presence before the concerned police station on every 1st day of the English Calender month, between 11:00 a.m. and 2:00 p.m. for a period of one year;

(i) shall maintain all the rules and regulations framed by the Municipality regarding contemporary status of corona virus/Covid-19, State Government or by any competent authority, including social distancing.

7.1 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.

7.2 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 shall release the applicant forthwith only if the applicant is not required in connection with any other offence for the time being.

8. Rule is made absolute accordingly. Direct service is permitted through fax / e-mail / any other electronic mode.

8.1 The Registry shall communicate this order by fax / e-mail to the concerned Court / authority.

[Dr. Ashokkumar C. Joshi, J.]

VR PANCHAL