

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION NO. 16560 of 2023
(FOR REGULAR BAIL - AFTER CHARGESHEET)**

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AASHIFKHAN @ MAYA RASULKHAN MALEK
Versus
THE STATE OF GUJARAT

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Appearance:

MR MM TIRMIZI for MR MD SAAD SHOEB KAZI(13607) for the
Applicant(s) No. 1,2,3,4

MR JK SHAH APP for the Respondent(s) No. 1

MR MM KADIWALA for Original Complainant;

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CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 02/01/2024

ORAL ORDER

1. Leave to amend.
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.11217036230096/2023 registered with the Varahi Police Station, Patan for the offence punishable under Sections 143, 147, 148, 149, 307, 326, 323, 294(B), 506(2) and 34 of the Indian Penal Code and under Section 135 of the Gujarat Police Act.
3. Heard learned advocate, Mr. M.M. Tirmizi for the applicants, learned APP Mr. J.K. Shah for the respondent - State of Gujarat and learned advocate, Mr. M.M. Kadiwala for the original complainant, who is permitted to file his appearance in the Registry.

4. Learned advocate for the applicants submitted that now the investigation is completed and after submission of the chargesheet, the present application is preferred and the applicants are in jail since their arrest. Learned advocate further submitted that now the matter is settled between the parties and no grievance would survive and the original complainant has also filed an affidavit giving his consent for the grant of bail. It is, therefore, urged that considering the nature of the offence and on the ground of settlement, the applicants may be enlarged on regular bail by imposing suitable conditions.
5. Learned APP for the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. It is submitted that the role of the present applicants is clearly spelt out from the papers of the chargesheet and, hence, the present application may not be entertained.
6. Learned advocate appearing for the original complainant has tendered copy of the affidavit sworn by the complainant and submitted that there is an amicable settlement arrived at between the parties and the original complainant has no objection if the present applicants are granted bail.
7. Learned advocates appearing on behalf of the respective parties do not press for further reasoned order.
8. 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 applicants and the role played by the applicant. It is found out from the record that the present application is preferred after submission of the chargesheet and now the investigation is completed and the applicants are in jail since their arrest. Other co-accused has already been granted bail by this Court. Further as stated above, settlement has been arrived at between the parties and the original complainant has sworn an affidavit giving his consent for the grant of bail to the applicants. Therefore considering the above factual aspects, the present application deserves to be allowed.

9. 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.
10. In the facts and circumstances of the case and considering the nature of the allegations made against the applicants 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 applicants on regular bail.

11. Hence, the present application is allowed. The applicants are ordered to be released on regular bail in connection with the FIR being C.R. No.11217036230096/2023 registered with the Varahi Police Station, Patan on executing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand only) each with one surety each of the like amount to the satisfaction of the trial Court and subject to the conditions that they 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;
12. The authorities will release the applicants only if they are is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the

concerned 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.

13. 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 applicants on bail.
14. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(DIVYESH A. JOSHI, J.)

Gautam