

Received on 06/10/2022
 Registered on 06/10/2022
 Decided on 08/10/2022
 Received on Year Month Days

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In the Court of Additional Sessions Judge Tapi At Vyara.

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Criminal Misc. Appl.No. 456/2022
 Exhibit:

Applicant : Dansingbhai Balubhai Gamit
 Aged - 44 years , Occupation - Labourer,
 Residing at : Village Umarkui (Gamit Faliyu),
 Taluka Vyara, District Tapi.

Versus

Opponent : The State of Gujarat
 (Through its Public Prosecutor)

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Subject: An application under the provision of Section 439 of
 the Code of Criminal Procedure,1973.

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Appearance:

Mr.M.D. Valvi : Ld. Adv.for the Applicant
 Mr.S.B.Pancholi : Ld. APP for Opponent-State.

-:: J U D G M E N T ::-

- 1) The applicant, by way of this application under Section 439 of Cr.P.C. seeks regular bail in connection the FIR bearing C.R.No.11824001220891/2022 with Vyara Police Station, District Tapi, for the offence punishable under Sections 65 F, 81 of The Prohibition Act.

Before moving this application, applicant has also asked relief to enlarge him on regular bail before the Judicial Magistrate First Class, Vyara, same was rejected.

- 2 On service of notice learned APP Mr. S.B. Pancholi appeared vide exh.-4 and I.O. Mr.Kamleshbhai Krushnabhai ASI, B. no. 674 of Vyara Police Station, submitted objections in the form of affidavit at exh.-5.
- 3 The short facts of the offence in context of which, present bail application moved is that, the complainant and other police officers were in drive and patrolling in Vyara Police station area, on date 01.08.2022. At that time on the basis of information they reached to the house of Dansingbhai Balubhai Gamit /present applicant, residing at Gamit Faliyu, village Umarkui, Taluka Vyara, District Tapi, where Dansingbhai Balubhai Gamit was found. On search of his house and sugarcane field, 105 liters wash, worth of Rs.210/- was found and seized in the presence of panchas as he was not having any license for possession of said muddamal. On interrogation he has declared name of Ratan Jiyaram Gujjar residing at Dairy Faliyu, village Ramkuva as supplier of said chemical. Hence, complaint was lodged against both of them and registered vide above said number with Vyara police station.
- 4 By way of this application, it is contended by applicant, that he is innocent and has nothing to do with said prohibited Muddamal, but, he was falsely implicated. He is permanent resident of village Umarkui and only bread winner of his family. If, he is not released on bail, then his family has to suffer, more over he has to face pre trial conviction. He is assuring before the Court that at the time of trial, he will remain present so, he should be enlarged on bail.
- 5 Learned advocate Mr. M.D. Valvi has submitted that prohibited muddamal is not seized from the direct

possession of applicant. His presence is not required for investigation. If he is not enlarged on bail then his personal liberty will be violated only on the basis of false implication. When applicant is assuring before the Court to remain present at the time of trial, he should be enlarged on bail because there will be delay in conclusion of trial looking to the pendency before Vyara court.

- 6 Heard learned Mr. APP S.B. Pancholi, who has submitted that applicant was in direct possession of the prohibited Muddamal and he is habitual offender. If he is released on bail then he will not remain present at the time of trial. So, looking to prima facie involvement and his criminal antecedent bail application is to be rejected.
- 7 Heard submissions advanced by both the parties, gone through the FIR and police papers. From which it reflects that muddamal was seized from the house and sugarcane field of the accused Dansingbhai. There is criminal antecedent of accused but in none of the matter he is convicted. On his arrest, he sent to judicial custody. He is not required for further investigation. Looking to the quantity, delay likely to be caused in trial, nature and gravity of offence, allegations against him and when he is assuring to remain present before the court at the time of trial, considering ratio laid down by Hon'ble Supreme court in **Sanjay Chandra Vs. CBI Criminal Appeal no. 2178 of 2011 on date 23.11.2011** in the interest of justice following order .

::- O R D E R -::

Present application is hereby allowed.

Applicant Dansingbhai Balubhai Gamit Aged - 44 years ,
Occupation - Labourer, Residing at : Village Umarkui
(Gamit Faliyu), Taluka Vyara, District Tapi. is ordered to be

released on regular bail in connection with FIR bearing C.R. No. 11824001220891/2022 registered with Vyara Police Station, District Tapi on executing personal bond of Rs.5,000/-(Five thousand) with surety of the like amount to the satisfaction of the trial Court and subject to the conditions that

CONDITIONS

- 1 Not to take undue advantage of liberty and not to act in a manner injurious to the interest prosecution.
- 2 Not to leave Gujarat without prior permission of the concerned trial Court.
- 3 Mark presence before the concerned Police Station on First day of every English Calendar Month for a period of six months between 11:00 am to 2:00 pm.
- 4 Furnish the present address of residence to the I.O. and also to the trial Court at the time of execution of bond and shall not change the residence without prior permission of the Concerned trial Court.

At the time of trial, the trial Court shall not be influenced by the prima facie observation made by this Court in the present order.

Bail bond is to be executed before the concerned trial Court

Order signed and pronounced in the open Court today on 8th Day of October, 2022.

Place : Tapi @ Vyara
Date :08/10/2022.

(T.D. Padia)
Additional Sessions Judge
Tapi @ Vyara
Code No.: GJ00573)