



Presented on : 09-11-2022
 Registered on : 09-11-2022
 Decided on : 11-11-2022
 Duration : Y M D
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**IN THE COURT OF ADDITIONAL DISTRICT JUDGE
 AT THARAD, DIST.:-BANASKANTHA**

CRMA . 323/2022

EX-

APPLICANT :

Dilipsinh Prabhatsinh Chouhan

Age:- Adult, Occupation:- Agriculture

R/o : Darbarvas, Taluka : Harij, District : Patan

VERSUS

RESPONDENT :

The State of Gujarat

 Mr. N. O. Gohil - Learned Advocate for the applicant.

Mr. R. D. Joshi - Learned A.G.P for respondent.

|| ORDER ||

1. The applicant has filed present application under Sec. 439 of Cr.P.C. for grant of bail in with connection of Tharad Police Station Prohibition Offence Registration No. 11195050220762/2022. The short facts of the applicant's application may be set out are as under :

That the applicant has been arrested by Police in the above stated

offence under Sec. 65 (A)(E), 116 (B), 98 (2) and 81 of The Prohibition Act. It has further been stated that he is in judicial custody, he is innocent person has not committed the crime as alleged by the prosecution and is not involved in any offence and has falsely been arrested. The other accused persons have been already been released on regular bail by this court and so he deserves to be given parity. Has further stated that he is now not needed for investigation. He has not played any role directly or indirectly in the commission of offence. The applicant has further stated that he is residing with family at the address stated in this application, is a reputed person and the only earning member in the family and, therefore, he is required to be released on bail otherwise his family will suffer a lot. It would take much time for commencement of the trial and the punishment for the alleged offence is not life imprisonment and has further stated that he undertakes to abide by any conditions which may be imposed by the Court. That there is no prima facie case against him. So, he has requested to allow this application with suitable terms and conditions.

2. Notice of the applicant's application is duly served to the State of Gujarat and Mr. R. D. Joshi, learned A.P.P., for the State has appeared and resisted the applicant's application whereby it has been stated that applicant is involved in serious offence under the Prohibition Act and during the investigation, sufficient evidence is collected against the accused person and has antecedents and if, in such kind of offence, the accused person is released on bail, then there would be adverse effect in the society and there are all chances that he would tamper with the prosecution evidence and, therefore has requested to this court to reject the applicant's application.

3. Heard Mr. N. O. Gohil, Learned Advocate for the applicant and Mr. R. D. Joshi, learned A.P.P. for the State. Read bail application and

considered the papers on record.

4. Looking to the arguments of learned advocates of both the sides, it is not in dispute that the applicant is arrested by Police in connection with Tharad Police Station Prohibition Offence Registration No. 11195050220762/2022, under Sec. 65 (A)(E), 116 (B), 98 (2) and 81 of The Prohibition Act, and the applicant is in judicial custody. Now, the applicant has filed present bail application by stating that he is innocent person and has not committed any offence and whatever allegations made by the prosecution is false; whereas, on the other side, according to State of Gujarat, the accused-person has committed alleged offence in present dispute and if he is released on bail, then there are all possibility to temper with the evidence and misuse the liberty of the bail by the accused-person and, as he has antecedents and if he would be released on bail, he would not remain present during the trial and therefore, application is required to be dismissed.

5. So far as bail is concerned, this Court is very well aware with the principle laid down by the Hon'ble High Court as well as Hon'ble Apex Court in so many reported cases with regard of the precaution required to be taken by the Court while deciding the bail application. This Court is also very well aware that bail is a rule and jail is an exception. Punishment of the offence is not material to reject or allow the bail application but what is material to decide the bail application is a prima facie case, involvement of the accused, seriousness of offence, possibility of misuse of the liberty and presence during the course of trial. While deciding the bail application it is not the duty of the Court to appreciate the evidence like trial, material collected by Investigating Agency during the course of investigation, the Court has only to see that whether sufficient evidence is recovered by the Investigating Officer to proceed with against the accused for the allegation imposed against them. Detailed

examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications, yet a court dealing with the bail application should be satisfied as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The Court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

6. It is settled principle that liberty of a person should not ordinarily be interfered with unless there exists cogent grounds therefore. In a case of State of ***Uttar Pradesh v. Amarmani Tripathi, reported in 2005(8) SCC 21***, the Hon'ble Apex Court held that “it is well settled that the matters to be considered in an application for bail are (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence (ii) nature and gravity of the charge (iii) severity of the punishment in the event of conviction (iv) danger of the accused absconding or fleeing, if released on bail (v) character, behavior, means, position and standing of the accused (vi) likelihood of the offence being repeated (vii) danger, of course, of justice being thwarted by grant of bail”. In above referred authority the Hon'ble Apex Court also held that while a vague allegation that the accused may temper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. It is necessary for the Courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are : 1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence. 2. Reasonable apprehension of tampering of the witness or apprehension of threat to the

complainant 3. Prima facie satisfaction of the Court in support of the charge.

7. In bail application, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The grant or refusal of the bail lies within the discretion of the Court.

8. Looking to the principle laid down by the Hon'ble Apex Court in the authorities, it becomes very clear that unless and until any strong evidence on record to reject the bail application, the Court is not competent to disallow the bail application submitted by the accused. This Court is also in belief that statute has given discretion to the Court under Secs.437 and 439 of Criminal Procedure Code to release the accused-persons who are charged with non-bailable offence.

9. I have gone through the evidence collected by the IO during the course of investigation. Now, no recovery or discovery is to be made, and there appears to be now no investigation to be done qua this applicant-accused. It is to be noted that as per the prosecution, the applicant-accused is having antecedents but only on such basis, the bail cannot be rejected. It is not brought on record by the State that the applicant-accused has been convicted in any of the earlier offences which are registered against him. The Hon'ble High Court of Gujarat has held in catena of judgments that merely some offences are registered against the accused, it would not dis-entitle the accused for being released on bail. The most important fact which is required to be considered is that the other accused persons alleged in the same offence have already been released on regular bail by this court and hence considering the law of

parity, the present applicant-accused deserves parity and is required to be released on bail. Hence, considering the circumstances of the case, involvement of the accused, evidence collected by the I.O. and on the basis of the discussion made above, there appears no much ground to reject the present bail application.

10. Looking to the aforesaid discussion and considering the circumstances of the present case, the charge leveled against the accused, in my view there is a prima facie case to allow the said application and release the accused on bail. There is no evidence brought by the prosecution on record to show that the presence of the accused is necessary during the course of investigation or judicial custody is required till final disposal of the case. Mere bare allegation in affidavit that accused is likely to misuse the liberty of the Court is not sufficient to reject the bail application. It is to be noted that considering the present situation, the trial would definitely take a long time and considering the afore stated discussion along with the severity of the offence and the fact that the case is triable by the Magisterial Court, this application is required to be allowed and the applicant-accused is required to be released on bail by imposing conditions.

On the basis of the discussion made above, to serve the ends of justice, I pass following final order:

O R D E R

Present Criminal Misc. (Reg. Bail) Application No. 323/2022 of applicant **Dilipsinh Prabhatsinh Chouhan** under Section 439 of Cr.P.C. is hereby allowed and the present applicant/accused is ordered to be released (enlarged) on bail in connection with Prohibition Offence Registration No. 11195050220762/2022, registered with Tharad Police Station for the offence punishable under Secs. 65 (A)(E), 116 (B), 98 (2) and 81 of The Prohibition

Act, on his executing solvent surety of Rs.15,000/- (Rupees fifteen thousand) and personal bond of like amount of the applicant/accused subject to following conditions that,

CONDITIONS :

1. The applicant/accused must mark his presence to the concerned police station on every first date of the month till filing of the charge sheet;
2. The applicant/accused shall not indulge in any other offences;
3. The applicant/accused must remain present during the judicial proceedings against him on each occasion before the concerned Court without fail;
4. Not to take undue advantage of his liberty or abuse his liberty;
5. Not to act in a manner injurious to the interest of the prosecution;
6. Not to leave India without prior permission of the Court;
7. Not to temper with evidence or influence the witnesses concerned;
8. Furnish the address of his residence along with the mobile number to the Investigating Officer and also to the Court at the time of execution of bond and shall not change the residence without prior permission of the trial Court;
9. Surrender his passport, if any, before the Trial court within a week and if applicant is not having passport, the appropriate affidavit must be filed to the lower court;
10. In case of breach or modification of any of the above stated conditions, the learned Trial Court would be empowered to deal and decide the same according to the provisions of law.

Bail to be furnished before learned Trial Court.

Yadi be sent accordingly to the concerned court as well as concerned police station.

Pronounced in open court today on this **11th day of November, 2022.**

Date : 11-11-2022.

Place : Tharad.

[Pratik Jaysukhbhai Tamakuwala]

Additional District Judge.

Banaskantha at Tharad.

Code No.GJ00581.