

Received on : 06/10/2022
Registered on : 06/10/2022
Decided on : 13/10/2022
Duration : DD-MM-YY
07-00-00
Exhibit : 9/B

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
GANDHIDHAM-KACHCHH.**

Criminal Miscellaneous Application No. 528/2022

Applicant : **Amit Bhagwatilal Bhatt,**
Age : 42 years,
Residing at Village-Gondal,
Bhilwada,Rajasthan.
(At present in Judicial Custody)

Versus

Opponent : The State of Gujarat

Appearances:

Mr. C.J.Dharak, Learned Advocate for the applicants-accused.

Mr. H.P.Gadhavi, Learned Addl. Public Prosecutor for the opponent-State.

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

01. The present bail application is preferred by the applicants-accused for regular bail u/s.439 of Cr.P.C. Accused came to be arrested for the alleged offence u/s 406,420 of Indian Penal Code,1860 and section 66(c) (d) of I.T.Act,2000 for which F.I.R. bearing CR No. 11993016220001/2022 came to be registered with Cyber Crime Police Station,Gandhidham. The applicant is in judicial custody since 30/09/2022. Therefore, seeks enlargement on bail u/s 439 of Cr. P. C. 1973.
02. The short and sum substance of the complaint are such that the accused have actively aided each other in commission of a fraud by

getting some money of complainant get transferred through RTGS without the knowledge of the complainant. The present case can said to be a case of online fraud committed through electronic device and subject matter of Cyber crime. The mobile number of complainant blocked by making a false call by mobile number 7595842707 to the Vodafone company that scheme has been lost. Then on the next day four transactions for Rs. 29,46,000/- has been executed in the account of complainant without his knowledge and thereby the said amount has been siphoned from the complainant's account. The role played by the present accused is such that he has collected the accounts and remitted to perpetrators of crime and can said to be a recruiter.

03. Heard learned Advocate for the applicant. Besides the routine contention, learned Advocate has submitted that he is innocent and falsely implicated for the alleged offence. That he does not know anything about occurrence of accident and have not played any active role in incident. That there is no prima facie case against the applicant. That the applicant has liability to maintain family members and the trial of the case may take long time and if he be not enlarged on bail, his future may be ruined. That the applicant is permanent resident of Bhilwada (Rajasthan) and not likely to abscond. No overt act has been attributed to him. In fact he has got nothing and even his account has also not involved. If he be enlarged on bail, will not hamper or temper with the evidence of the prosecution or threaten the witnesses and will observe all conditions that may be imposed by the Hon'ble Court for grant of bail. Hence, it is prayed to grant the present application. He has submitted that maximum punishment is upto 7 years. Investigation qua the applicant is over. He has placed relied upon the following judgment :

(1) Sanjay Chandra V/s. CBI, reported in 2012 (1) GLH 93 SC.

04. Opposing the present application, learned A.P.P. for the State submits that looking to gravity of offence, the applicant is not deserving to be enlarged on bail. It is submitted that the F.I.R. is clearly and directly pointing a finger and sets out the role played by the present applicant. They have committed crime over crime for no reason. There is all possibility of tempering or hampering the evidence of prosecution and threatening of witnesses cannot be ruled out as other accused are arrested from the different State. The present case of online fraud cannot be effected if he be granted bail. The investigation is at crucial stage and therefore, under the circumstances, the application be rejected.
05. Investigating Officer Shri K. P. Desai has filed his affidavit at Ex.8, wherein it is submitted that there is direct and sufficient evidence against accused. Further, the investigation is at crucial stage. The other accused are arrested and the role of the applicant with other accused has to be subject matter of investigation. Therefore, the applicant does not deserve to be enlarged on bail and hence, it is prayed to reject this application.
06. Bail to be granted or not to be granted requires to be decided on celebrated principles enunciated by the Hon'ble Apex Court and the Hon'ble Gujarat High Court. This Court, at this stage should not go on scrutinizing the evidences before it. The Hon'ble Apex Court has held that the Court must bear in mind the While deciding the bail application, the merits and demerits of the case should not be

discussed in detail, but some important factors are required to be taken into consideration i.e. prima-facie case against the accused, ***nature and gravity of offence, punishment prescribed for the offence***, danger of the accused absconding or fleeing away, if released on bail, character, behavior, means, position and standing of the accused, likelihood of the offence being repeated, reasonable apprehension of the witnesses being tampered with, larger interest of the society and State, etc.

07. Considering the above factors in the present case and after perusing the police papers, it seems that the applicant has alleged to have actively participated in offence. Looking to the statement of account of applicant, it is clear that the applicant is involved in the commission of offence. The apprehension of repetition of offence. The accused is part of systematic online fraud. He has actively participated in this crime. Nowadays innocent persons are the victim of this fraudster. Day by day people are being victimised by this type of fraud and generally nothing has been come out of investigation. In the present case, the I.O. has cracked the module and arrested many persons. Therefore, at this stage, it cannot be said that implication of accused is only as third person. The investigation is at crucial stage and release of accused would jeopardize the prosecution case. I Would like to make it clear that at this stage, the Court has not scrutinize the evidence in detail. However, only on the ground of pending investigation. In my opinion, this is not a fit case to exercise discretion vested with this Court and *after filing of charge-sheet accused can approach for bail again* Therefore, without further discussion, I pass the following order:-

:-ORDER:-

The application is rejected and is ordered to stand accordingly disposed off.

Pronounced in Open Court today i.e. on this **13th** Day of October, **2022.**

DATE : 13/10/2022
Gandhidham.

(M. J. PARASHAR)
ADDITIONAL SESSIONS JUDGE,
Gandhidham -Kachchh.
UI Code No.GJ00463.

self