

Common Order Criminal Misc. Application (Bail)

No 8201/2023, 8215/2023, 8214/2023

Lalgate police Station I 1121006112300345 /2023

- (1) This is an applications for bail filed by the accused-applicants **(1) Mohmad Irfan s/o Abdul Rahim Saiyed (2) Sunil s/o Narayan Eyaavan (3) Umang s/o Suresh Chauhan** under Section-437 of the Code of Criminal Procedure, 1973 in connection with an offences under Section-420,114 of IPC Lalgate Police station **I 1121006112300345 /2023**.The accused has been arrested 03/08/2023
- (2) Heard the Ld. A.P.P Mr Parmar, He objected bail application inter alia grounds that the offence is serious one and. He further contended that the investigating is pending so he should not be released on bail. There is no other arguments advanced by Ld. A.P.P. I persued the affidavit filed by the Complainant/victim on dated 03/08/2023.
- (3) Heard the Ld. Adv. , For the accused-applicant. He contended that there is no prima facie evidence against accused to book him in this case Looking into the complaint, the Present accuseds has not recieved any amount from them complainant. He further contended that the accused has been falsely implicated in this case and he is totally innocent. He further contended that no case is registered against the present accused in any crime and he is of innocent man. He further contended that the presence of accused would be easily available at the time of trial. He further contended that the accused-applicant is ready to comply any conditions that may be imposed by your Honour

court. He further contended that this is the first crime registered against the accused and his antecedent is good without any criminal record.

(4) Now, what is important to see while deciding an application for bail is well settled and it is not that the bail application filed by the accused should be dismissed if prima facie case is made out against the accused. The other factors like seriousness of an offence committed, antecedent of accused, presence of accused at the time of trial, maximum punishment that may be imposed to accused in charged offences, tempering with investigation and hampering witnesses and the likes. Furthermore even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of accused would be readily available at the time of trial or that he is likely to be fled away from trial.

(5) In view of the well settled bail jurisprudence prevailing in India settled by a catena of decisions of the Hon'ble Supreme Court and various Hon'ble High Courts that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. Furthermore in this case the maximum penalty that may be imposed on accused upon proof of charges levelled against him is Seven years.

(6) Furthermore it appears to the court that the antecedent of the accused is not criminal one and it is appeared through the report of lalgate Police Inspector,, Surat stating that even no single offence under the any law has been registered against the present accused other than

this case. it is to be noted that Investigating officer has not complied direction issued by hon'ble Supreme court while arresting accused. As per the section 41 of Cr.P.C. **Investigation officer of Lalgate has not issued notice to accused prior to arresting the accused. therefore this court has not approved/ authorised the detention of the accused. Recently in case of Md. Asfak Alam Versus State of Jharkhand CRIMINAL APPEAL NO(S). 2207 OF 2023 date 31/07/2023, Hon'ble Supreme court has issued direction to the lower court as well as police authorities to comply direction of Arnesh kumar Vs State of Bihar** as follows:

"I. 11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorize detention casually and mechanically. In order to, ensure what we have observed above, we give the following directions: 1

1.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer- shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the case under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, ***but also such cases where***

offence is punishable with imprisonment for a terms which may be less than seven years or which may extend to seven years, whether with or without fine.”

II. The High Court shall frame the above directions in the form of notifications and guidelines to be followed by the Sessions courts and all other and criminal courts dealing with various offences.

III. Likewise, the Director General of Police in all States shall ensure that strict instructions in terms of above directions are issued. Both the High Courts and the DGP's of all States shall ensure that such guidelines and Directives/Departmental Circulars are issued for guidance of all lower courts and police authorities in each State within eight weeks from today.

IV. Affidavits of compliance shall be filed before this court within ten weeks by all the states and High Courts, through their Registrars

(7) Under looking into the abovementioned circumstances appears in relation to the present accused-applicant, **Lalgate police has not complied the direction issued by Hon'ble Apex court hence this court has not authorised the accused dentention, the discretionary power under Section-437 of the Code of Criminal Procedure can be exercised in favour of the accused upon imposing strict conditions.** In view of the aforesaid discussion, this court is inclined to grant this application for bail on imposing strict conditions to secure his

presence at the time of trial so I hereby pass following order in the interest of justice.

Final Order

- The application for bail filed by the present applicant-accused is hereby allowed. The applicant-accused **applicants (1) Mohmad Irfan s/o Abdul Rahim Saiyed (2) Sunil s/o Narayan Eyaavan (3) Umang s/o Suresh Chauhan** is hereby ordered to be released on bail subject to following conditions;
 1. The applicant-accused shall not commit similar offence while on bail.
 2. The accused shall not temper with the investigation and hampering witnesses.
 3. The accused shall submit an Affidavit regarding his present and permanent home.
 4. The accused shall bear personal bond for his appearance of sum of Rs. 25,000/- and one surety of like amount.
 5. the accused shall appear before the court without fault whenever he is summoned by the court failure of which shall be deemed to have forfeited the personal bond and surety bond.
 6. The bail of the accused shall stand cancelled if any of the above condition(s) is violated by the accused.

Place: SURAT

Date: 04/08/2023

(Arjunsinh.Pratapsinh Randhir)

13TH ACJM SURAT.

Order below Bail application

- (8) This is an application for bail filed by the accused-applicant under Section-437 of the Code of Criminal Procedure, 1973 in connection with an offences under Section-66(1)(b), 65E, of the Bombay Prohibition Act registered before borsad Police Station vide III CR No-5048-2017. The accused has been arrested.

- (9) Heard the Investigation officer, He objected bail application inter alia grounds that the offence is serious one and the large number of quantity has been collected by the investigating agency during investigating of this case. He further contended that the investigating is pending so he should not be released on bail.
- (10) Heard the Ld. Adv. For the accused-applicant. He contended that there is no prima facie evidence against accused to book him in this case. He further contended that the accused has been falsely implicated in this case and she is totally innocent. He further contended that no case is registered against the present accused in any crime and she is of innocent man. He further contended that the presence of accused would be easily available at the time of trial. He further contended that the accused-applicant is ready to comply any conditions that may be imposed by your Honour court. He further contended that this is the first crime registered against the accused and her antecedent is good without any criminal record.
- (11) Looking to the FIR, it prima facie appears that the Muddamal has been recovered from the house of the applicant-accused and the prima facie case is also made out against the accused in this case. Now what is important to see while deciding an application for bail is well settled and it is not that the bail application filed by the accused should be dismissed if prima facie case is made out against the accused. The other factors like seriousness of an offence committed, antecedent of

accused, presence of accused at the time of trial, maximum punishment that may be imposed to accused in charged offences, tempering with investigation and hampering witnesses and the likes. Furthermore even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of accused would be readily available at the time of trial or that he is likely to be fled away form trial. Accused is women. Under Cr p C section 437 such special circumstances appears in relation to the present accused-applicant, the discretionary power under Section-437 of the Code of Criminal Procedure can be exercised in favour of the accused upon imposing strict conditions. In view of the aforesaid discussion, this court is inclined to grant this application for bail on imposing strict conditions to secure her presence at the time of trial so I hereby pass following order in the interest of justice.

Order

The application for bail filed by the present applicant- accused is hereby allowed.

The applicant-accused is hereby ordered to be released on bail subject to following conditions;

- (1) The applicant-accused kantaben sangitaben rameshbhai chunarwaghari residing at vagharivas tal borsad shall not commit similar offence while on bail.
- (2) The accused shall bear personal bond for his appearance of sum of Rs. 7500/- and one surety of like amount.
- (3) The bail of the accused shall stand cancelled if any of the above condition(s) is violated by the accused.

Place: borsad

Date: 15/05 /2017

(Arjunsinh.Pratapsinh Randhir)

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