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Court : Gujarat

Decided On : Mar-18-2011

Judge : Mr.Justice Rajesh H.Shukla,J.

Acts : Code of Criminal Procedure (CrPC) (Cr.P.C) - 439; Indian Penal Code (IPC) - Sections 420, 464, 465, 466, 467, 468, 471, 472, 474, 34.

Appeal No. : CRIMINAL MISC.APPLICATION No. 2702 of 2011.

Appellant : Devendra @ Devji Meghajibhai DevdA.

Respondent : State of Gujarat.

Advocate for Def. : MR HL HANI, Adv.

Advocate for Pet/Ap. : MR PM THAKKAR; MS SANDHYA; D NATANI, Advs.

Judgement :

1. The present application has been filed by the applicant for grant of regular bail under sec. 439 of the Code of Criminal Procedure after the charge sheet is filed which is a successive bail application after Criminal Misc. Application No. 7972 of 2010.
2. The applicant-accused is charged with having committed offences under sections 420, 464, 465, 466, 467, 468, 471, 472, 474 and 34 of IPC for which FIR, being C.R. No. I-407/2009, has been registered with Sector-7 Police Station, Gandhinagar.

3. Learned Sr. Counsel Mr. P.M. Thakkar appearing with learned advocate Ms. Sandhya Natani for the applicant has referred to the papers and submitted that though on earlier occasion the applicant was not released on bail, he has remained in jail without any progress of the trial . He submitted that, therefore, considering the nature of offence and the fact that other co-accused have been released as per the order passed in Criminal Misc. Application No. 8618 of 2010 as well as Criminal Misc. Application No. 15929 of 2010 dated 9.2.2011, the present application may be allowed.

4. Learned Sr. Counsel Mr. Thakkar has also referred to the details about the role and submitted that even if it is assumed that there is a prima facie case, still, considering the provisions of sec. 439 of Cr.P.C. and the basic principles with regard to grant of bail, the present application may be allowed. He submitted that even if there is a prima facie case, when the trial is likely to take time, the normal criteria which are to be considered are, (i) whether he is likely to jump the bail, (ii) whether he is likely to interfere with the witnesses and tamper with the evidence. He submitted referring to the Rojkam that actually no progress has been made and in fact warrant was issued to the complaint. He therefore submitted that the present application may be allowed when other co-accused have been released who are also attributed with active role like Jagatsing Rajput @ Tiger (Criminal Misc. Application No. 15929 of 2010).

5. Learned APP Mr. Jani resisted the application. He referred to the statements of witnesses including the statement of one Iqbal and also the statement of bank account of the applicant accused to emphasise that he is the beneficiary and he has received the amount suggesting his prima facie involvement. He submitted that the amount was deposited and thereafter it was withdrawn and the account has been closed as stated in the statement of the Manager of the bank. Learned APP Mr. Jani strenuously submitted that when there is a prima facie case and there is an active role attributed to the applicant with regard to the forged document on the basis of which huge land has been sought to be transferred, the present application may not be entertained. He has also submitted that there are no change of circumstances. Alternatively, it was submitted that some direction for expediting the trial may be given.

6. In view of rival submissions, it is required to be considered whether the present application can be entertained or not.

7. It is well accepted that this court is not required to appreciate and scrutinize the evidence in detail at this stage. However, for considering the prima facie case, relevant aspects like the nature/gravity of offence, the manner in which it is alleged to have been committed, the role attributed etc. have to be considered. In the facts of the present case, without any further elaboration, it would suggest that there is a prima facie case suggesting his active involvement. However, at the same time, as rightly contended by learned Sr. Counsel Mr. Thakkar, though initially he has not been released on bail, but since the trial has not progressed or actually not even commenced, his application is required to be considered particularly when the other co-accused have been released on bail.

8. Therefore, though the earlier application is rejected, the fact that there has been a delay in trial when the trial has not even commenced and the other co-accused have been released, the present application is required to be considered. Therefore, though there is a prima facie case, the criteria for grant of bail have to be considered, viz. (i) whether he is likely to jump the bail and whether his presence can be secured, and (ii) whether he is likely to interfere with the witnesses and tamper with the evidence. Therefore, applying the aforesaid criteria for the purpose of deciding the bail application even though there may be a prima facie case suggesting involvement and the role attributed and also the nature/gravity of the offence, the present application is required to be considered having regard to the aforesaid aspects of delay in trial as well as the fact that the other co-accused have been released including the accused like Jagatsing Rajput @ Tiger who has been released on bail as per the order passed in Criminal Misc. Application No. 15929 of 2010 dated 9.2.201.

9. Therefore, without any further elaboration which has been much emphasised by the learned APP about the prima facie involvement or the role, the court is of the opinion that the present application deserves to be allowed in view of the discussion made hereinabove.

10. The application is accordingly allowed. The applicant is ordered to be released on bail in connection with C.R. No. I-407/2009 registered with Sector-7 Police Station, Gandhinagar. on his executing a personal bond of Rs. 10,000/- (Rupees Ten Thousand only) with one solvent surety for the like amount to the satisfaction of the lower court and subject to the further conditions that he shall :

- (a) not take undue advantage of his liberty or abuse his liberty.
- (b) Not to try to tamper or pressurize the prosecution witnesses or complainant in any manner;
- (c) not act in any manner injurious to the interests of the prosecution.
- (d) Maintain law and order and should co-operate with the investigating officers;
- (e) Mark his presence before the concerned Police Station on the first Monday of every calendar month between 11.00 am to 2.00 pm till the trial commences.
- (f) Furnish the address of his residence to the investigating officer and also to the court at the time of execution of the bond and shall not change his residence without prior permission of the court.
- (g) Surrender his passport, if any, to the lower court, within a week.

11. If breach of any of the above conditions is committed, the concerned Sessions Judge will be free to issue warrant or take appropriate action in the matter.

12. Bail before the lower court having jurisdiction to try the case. It would be open to the trial court concerned to give time to furnish the solvency certificate, if prayed for.

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