

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 20242 of 2021

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AHEMADMIYA BHAUDDINMIYA SAIYAD

Versus

STATE OF GUJARAT

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Appearance:

MR ASIM PANDYA, SR ADVOCATE with
MR GIRISH D CHAVDA(3226) for the Applicant(s) No. 1

MR MITESH AMIN, PUBLIC PROSECUTOR with
MS MAITHILI MEHTA APP for the Respondent – State

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CORAM: HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Date : 07/09/2022

CAV ORDER

1. By way of this application preferred under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.', for short), the applicant has prayed for his release on regular bail in connection with First Information Report ('FIR', for short) bearing CR No. 11192061210309 of 2021 with Viramgam Town Police Station, Dist. Ahmedabad for the offences punishable under Sections 3(1)(B), 3(2) and 3(4) of

the Gujarat Control of Terrorism and Organized Crime Control Act, 2015 ('the Act, 2015', for short).

2. Heard learned senior advocate Mr.Asim Pandya with learned advocate Mr.Girish Chavda for the applicant and learned Public Prosecutor Mr.Mitesh Amin with learned Additional Public Prosecutor Ms.Maithili D. Mehta for the Respondent – State.
3. Initially, FIR bearing CR No. 11192061210309 of 2021 registered for offences under Sections 3(1)(B), 3(2) and 3(4) of 'the Act, 2015' was registered on 23.05.2021 by the Police Inspector, Viramgam Town Police Station, Dist.Ahmedabad against 9 persons and the present applicant was not shown as accused in the aforesaid FIR. However, during the investigation, the applicant was arrested and

shown as accused No.10 in the charge-sheet, which came to be filed on 10.10.2021. As stated in the application, present applicant was arrested on 04.08.2021.

4.1 Learned senior advocate Mr.Amish Pandya appearing with learned advocate Mr.Girish Chavda for the applicant submitted that the present applicant has been arraigned as an accused and he is implicated in crime in question only on the basis of suspicion. There is no material or evidence which would connect the present applicant with the crime in question. He submitted that there is no *prima facie* case made out against the applicant which can justify the arrest of the applicant by invoking Sections 3(1)(B), 3(2) and 3(4) of 'the Act, 2015'. The allegation levelled in the charge-sheet

against the present applicant is that present applicant has created Gang known as 'Fracture Gang' and by remaining behind the curtains, for his personal benefits. He submitted that as such there is no material against the present applicant showing that he has created any such Gang or is involved, in any manner, with the organized crime being done by the syndicate.

4.2 Learned senior advocate submitted that after promulgation of 'the Act, 2015', no FIR is registered against the present applicant, nor even charge-sheet is filed against the applicant. According to learned senior advocate Mr.Pandya when the present applicant preferred an application before the learned Principal District and Sessions Judge & Designated Special Judge (GujCTOC),

Ahmedabad (Rural) being Criminal Miscellaneous Application No. 3256 of 2021, an affidavit opposing the said application was filed by the Assistant Superintendent of Police, Viramgam Division, Viramgam. As per the aforesaid affidavit, in all there are four offences registered against the present applicant till today. The details of four offences registered against the present applicant wherein charge-sheet is filed are stated in the application of bail by the present applicant which is reproduced as under:

Sr. No	F.I.R.	Offence under I.P.C.	Charge Sheet Filed Case No
1	Viramgam Town Police Station I – CR. Reg. No. 23 of 2010	324, 307, 337, 143, 147, 148, 149 and of the IPC and u/S. 25(1) (B) (A) of Arms Act	426 of 2012 Dtd. 28.03.2012 S.C.No.28 of 2012

2	Viramgam Town Police Station I – CR. Reg. No. 45 of 2010	143, 147, 149, 323 and 324 of the IPC	2072 of 2010 Dtd.01.11.2010
3	Viramgam Town Police Station I – CR. Reg. No.10 of 2012	307, 337, 147, 148, 149, 504, 506(2) of the IPC and u/S. 25(1) (B) (A) of Arms Act	118 of 2013 Dtd.17.01.2013 S.C.No.11 of 2013
4	Viramgam Town Police Station I – CR. Reg. No. 32 of 2018	143, 147, 148, 149 and 186 of the IPC and u/S.3 of the Damage to Public Property Act	167 of 2019 Dtd.25.01.2019

4.3 According to learned senior advocate Mr.Pandya, out of aforesaid four offences registered against the present applicant, for which charge-sheet is filed against the applicant, in preceding ten years of his arrest, in respect of first three offences at Sr. Nos.1, 2 and 3, the applicant has been acquitted and no appeal is filed against him. It was further

submitted that in respect of three offences out of four offences, charge-sheet was filed prior to the year 2013, whereas offences mentioned at Sr.No.4 was registered in the year 2019 wherein the applicant is granted bail pending trial. Learned senior advocate submitted that 'the Act, 2105' came into force after the public notification was published in the Official Gazette and since the Notification came to be published on 01.12.2019, there is no offence registered against the present applicant after 'the Act, 2015' came into force.

4.4 Learned senior advocate Mr.Pandya submitted that the last offence registered against the present applicant for which charge-sheet is filed under Sections 143, 147, 148, 149 and 186 of the Indian Penal Code so also under Section 3 of the Damage

to Public Properties Act, 1984, which occurred out of agitation in respect of some issues related to drainage problem before Viramgam Municipality and, therefore, the said offence cannot be termed as organized crime committed by the syndicate.

4.5 Learned senior advocate Mr.Asim Pandya submitted that in view of aforesaid submissions, there is no material against the present applicant to justify his arrest by invoking provisions of sections 3(1)(B), 3(2) and 3(4) of the 'Act, 2015' and that the applicant is required to be enlarged on bail, more particularly as there is no offence registered against the applicant for which charge-sheet is filed after 'the Act, 2015' came into force from the year December, 2019.

4.6 Learned senior advocate Mr.Pandya relied upon following decisions of Honourable the Supreme Court as well as decisions of this Court.

- (i) the order dtd.30.05.2022 passed in the case of *Mohamad ILIYAS Mohamad Bilal Kapadiya vs. State of Gujarat* passed by the Hon'ble Supreme Court in Special Leave to Appeal (Cri.) No.1815 of 2022;
- (ii) judgment dtd.06.05.21 rendered in Criminal Miscellaneous Application No.3819 of 2021 rendered in the case of *Sandip Omprakash Gupta vs. State of Gujarat*;
- (iii) oral order dated 15.06.2022 passed in Criminal Miscellaneous Application No.5581 of 2022 in the case of *Bak Saiyed @ Bakukhan S/o. Yasinkhan Pathan vs. State of Gujarat*; and

(iv) oral order dated 25.02.2022 passed in Criminal Miscellaneous Application No.23225 of 2021 in the case of *Rangaji Pratapji Thakor vs. State of Gujarat*

4.7 By relying upon aforesaid judgments, learned senior advocate Mr.Pandya submitted that the present case would be covered by the ratio laid down by Hon'ble Supreme Court in the case of *Mohamad ILIYAS Mohamad Bilal Kapadiya (supra)*. He submitted that applicant has already been acquitted in respect of three offences out of four offences, which are considered for invoking provisions of 'the Act, 2015' against the present applicant. In respect of one offence, the applicant is on bail which is in respect of mob agitating the issue about drainage line with Viramgam

Municipality which cannot be said to be of serious nature. Even if no other aspects are considered, the last offence which was of the year 2018 cannot be said to be an offence, in any manner, which can be said to have connected with an offence committed by organized crime syndicate. Though in respect of remaining three offences, charge-sheets were filed prior to the year 2013, there was no recent offence before the 'Act, 2015' came into force and since there is no offence registered against the present applicant after the 'Act, 2015' came into force, the present applicant requires to be released on regular bail.

5.1 Learned Public Prosecutor Mr.Amin with learned Additional Public Prosecutor Ms.Maithili Mehta has vehemently opposed the application for grant of

bail and submitted that the present applicant is indirectly but actively involved in organized crime by the syndicate. He has created one Fracture Gang and there are as many as 55 offences registered against members of the Fracture Gang. The present applicant is an Ex-councilor and is having political influence and, therefore, by using his political influence he is active behind the curtains and gets the acts of crime executed by other members of the syndicate.

5.2 Learned Public Prosecutor Mr.Amin took this Court to the statement of various witnesses who have given statements during the course of investigation and thereby pointed out petitioner's indirect role in creating the Fracture Gang and thereby committing organized crime. Learned

Public Prosecutor submitted that in view of the fact that there are 55 offences registered against the applicant, as per the statements of the witnesses, it is clearly revealed that present applicant is involved indirectly in those crime. Further, he has created Fracture Gang, which is syndicate used for executing criminal offences and, therefore, the present applicant may not be enlarged on bail.

5.3 Learned Pulic Prosecutor relied upon the judgment of Hon'ble Supreme Court rendered in case of *Kavitha Lankesh vs. State of Karnataka and others* reported in **2021 SC Online 956** and the judgment of the Division Bench of Bombay High Court in the case of *Govind Sakharam Ubhe vs. State of Maharashtra* rendered in Criminal

Miscellaneous Application No.18 of 2009 reported in **2009 SCC Online Bombay 770**.

5.4 By relying upon the judgment in the case of *Kavitha Lankesh (supra)*, learned Public Prosecutor submitted that, if it can be established by placing on record the material indicating that applicant is a member of syndicate, which has committed organized crime, which shows nexus between the accused and the crime committed by the accused as a member of organized crime syndicate, a person can be arraigned as accused under the 'Act, 2015'. In the instant case, according to learned Public Prosecutor, the present applicant has acted behind the curtain and, therefore, he being key member of the syndicate, he should not be enlarged on bail.

5.5 By relying upon judgment of *Govind Sakharam Ubhe (supra)*, learned Public Prosecutor Mr.Amin submitted that the activity of the present applicant can be termed as continuing unlawful activity and, therefore, learned Public Prosecutor prayed for dismissal of the present application.

6.1 I have heard learned senior advocate Mr.Asim Pandya with learned advocate Mr.Girish Chavda for the applicant and learned Public Prosecutor Mr.Amin and have also considered the fact that out of four offences, for which charge-sheet is filed against the present applicant, in respect of three offences, the charge-sheet was filed prior to the year 2013. Insofar as the last offence registered against the applicant in the year 2018 is concerned, which is registered under the provisions

of IPC and under 'The Damage to Public Property Act' is in respect of agitation, which took place against the Viramgam Municipality in respect of some issues related to drainage connection, for which FIR is filed invoking relevant provision of section 3 of The Damage to Public Property Act also, *prima facie*, I am of the view that it cannot be said to be an act of organized crime syndicate.

6.2 Further, there is no offence registered against the present applicant after the Act came into force and, therefore, if the latest judgment of Honourable the Supreme Court in the case of *Mohamad ILIYAS Mohamad Bilal Kapadiya (supra)* is concerned, the Hon'ble Supreme Court has observed as under:

“We are of the prima facie view that for invoking the provisions of the GCTOC Act, the following conditions will have to be fulfilled:

(i) that such an activity should be prohibited by law for the time being in force;

(ii) that such an activity is a cognizable offence punishable with imprisonment of three years or more;

(iii) that such an activity is undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate;

(iv) that in respect of such an activity more than one charge-sheet must have been filed before a competent Court; and

(v) that the charge-sheet must have been filed within a preceding period of ten years; and

(vi) that the Courts have taken cognizance of such offences.”

6.3 More particularly in the opinion of this Court, as far as last FIR of the year 2018 is concerned, for which charge-sheet is filed, *prima facie*, it cannot be said to be an activity, which is undertaken

either independently or jointly as a member of organized crime syndicate.

7. In the facts and circumstances of the case, this Court is of the opinion that, discretion is required to be exercised to enlarge the applicant on regular bail. This Court has considered the following facts while exercising discretion in favour of the applicant :-

- 7.1 The applicant is in jail since 04.08.2021;
- 7.2 Investigation is over and charge-sheet is filed;
- 7.3 Out of four offences for which charge-sheet is filed against the applicant, charge-sheet is filed prior to 2013 in respect of three offences;
- 7.4 So far as offence registered for the year 2018 is concerned, as discussed in forgoing paras, the

same cannot be said to be an offence committed by organized crime syndicate. However, this finding is only *prima facie* opinion of this Court and the trial Court may examine the aforesaid aspects independently without being influenced with the aforesaid finding and observations, at the time of trial;

7.5 The order dated 30.05.2022 of the Hon'ble Supreme Court in Special Leave to Appeal (Cri.) No.1815 of 2012 in the case of *Mohamad ILIYAS Mohamad Bilal Kapadiya (supra)*, as relied upon by learned senior advocate, more particularly requirement no.3, is considered by this Court.

7.6 Learned Public Prosecutor, under instructions from the Investigating Officer, is unable to bring on

record any special circumstance against present applicant.

8. In view of the aforesaid facts, without discussing the evidence in detail, this Court, prima facie, is of the opinion that, this is a fit case to exercise the discretion and enlarge the applicant on regular bail. Hence, present application is allowed and the applicant is ordered to be released on regular bail in connection with the FIR being CR No. 11192061210309 of 2021 with Viramgam Town Police Station, District Ahmedabad on executing a personal bond of Rs.10,000/- (Rupees Ten thousand only) with one surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that he shall;

[a] not take undue advantage of liberty or misuse liberty;

[b] not act in a manner injurious to the interest of the prosecution and shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave State of Gujarat without prior permission of the Sessions Judge concerned;

[e] furnish latest address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of the trial Court;

[f] mark his presence before the concerned police station in the first week of every month till the trial is over;

[g] shall not enter into local limits of District Ahmedabad except for making presence and for attending the trial.

9. The Authorities will release the applicant only if the applicant is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter.
10. Bail bond to be executed before the learned Lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.
11. At the trial, learned Trial Court shall not be influenced by the observations of preliminary

nature qua the evidence at this stage made by this Court while enlarging the applicant on bail. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

MISHRA AMIT V.

(NIRZAR S. DESAI,J)

