

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL MISC.APPLICATION NO. 5265 of 2023**

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VIJAYKUMAR CHANAJI PARMAR

Versus

STATE OF GUJARAT

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Appearance:

MONTUBHAI G PATEL(9299) for the Applicant(s) No. 1

MR AMIT N CHAUDHARY(5599) for the Applicant(s) No. 1

MS JIRGA JHAVERI, ADDITIONAL PUBLIC PROSECUTOR for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE UMESH A. TRIVEDI**

**Date : 29/04/2023**

**ORAL ORDER**

1. Leave to amend the prayer clause by adding Section 97 (c) of the Gujarat Prohibition Act, 1949.

2. This application is filed praying for an order of regular bail, post submission of charge-sheet, in connection with FIR being C.R. No.11209049230039 of 2023 registered at Talod Police Station, District Sabarkantha for the alleged offence punishable under Sections 65(a), 65(e), 81, 83 and 97 (c) of the Gujarat Prohibition Act, 1949 (*hereinafter referred to as 'the Prohibition Act'*).

3. Heard Ms. Kruti Shah, learned advocate for Mr. Amit N. Chaudhary, learned advocate for the applicant. According

to her submission, there is no legally admissible evidence against the applicant to charge him for the offence. She has further submitted that though tall claim is made by the investigating authority that the applicant, working as Armed Police Constable in Aravali Police Head Quarter, has provided prohibition articles to accused nos.1, 2 and 3, who were found in possession of the same, the material collected contains only the statement of accused no.1 - Rohitsinh Jagatsinh Chauhan claiming that the said prohibition article is supplied by the present applicant. However, according to her submission, there is no material produced in the papers of charge-sheet to support that tall claim made by the Investigating authority. Drawing attention of the Court to paragraph 4 of the impugned order, it is submitted that even the learned Judge while rejecting the application for bail has quoted wrong facts without even looking at the police papers claiming that mudammal articles have been recovered from the conscious possession of the present applicant - accused. It is further submitted that neither from the FIR nor from the investigation papers, it is revealed that even a bottle is recovered from the possession, apart from conscious possession of the present applicant. She has further submitted that though a claim is made in the FIR, that too, from the statement of the co-accused, that the applicant is using mobile number - 7874844910, papers of investigation does not reveal that either he possessed that phone and uses it or he is the owner of that SIM card bearing that phone number.

4. She has further submitted that not only other two co-accused, who were found travelling in a Scorpio Car

containing prohibition mudammal, have been released even the person from whom, as per the claim of the prosecution, the applicant purchased hails from Rajasthan is granted regular bail by the Court of Sessions and the person to whom it was to be delivered, after purchasing it from the applicant, is also granted anticipatory bail by the Sessions Court. Therefore, she has submitted that since offence is triable by the Court of Magistrate and maximum punishment provided therein is up to 10 years, in absence of any material brought on record by way of legally admissible evidence, at least he cannot be denied regular bail, post submission of charge-sheet, and therefore, she requests for bail.

5. As against that, Ms. Jirga Jhaveri, learned Additional Public Prosecutor, submitted that since the applicant is protector of law, he cannot be granted any discretionary relief of an order of regular bail when he himself has committed the offence, that too, under the 'the Prohibition Act'. She has further submitted that at the time of commission of offence, he was working at Aravali Police Head Quarter as Armed Police Constable, and therefore, he should not be released on regular bail when he is found to be involved in the present case.

6. Having heard the learned advocate for the applicant as also learned Additional Public Prosecutor, what emerges from the FIR as also the papers of investigation is that despite two of the accused are Police Constables against whom offence is registered, no concrete material is collected /investigated found in the papers of charge-sheet. Though in the FIR, a claim is made that the applicant is having mobile bearing

no.7874844910, no attempts are made by the Investigating authority, perhaps obliging the brotherhood, to establish that the said mobile number is being used by the present applicant, more particularly, when it does not stand in his name as per the information supplied by the service provider as it is in the name of some other person whose statement is also not recorded to establish that it was being used by the applicant. Though mobile phone, bearing number, claimed in the FIR is seized from him, it has not been sent to even FSL for conclusion of any data in proof of what is claimed in the FIR as also charge-sheet. It was attempted to be submitted that on the said mobile, the applicant - accused used to call on whatsapp call so as to have no any data available to be produced alongwith charge-sheet. However, when that mobile instrument is seized by the police, even no attempt is made to send it to the FSL to get even the call log retrieved to establish that on that phone number, based on whose statement present applicant - accused is sought to be involved in the case, had ever talked or had contacted on phone even through whatsapp call, because the call log even if it is deleted can be retrieved to establish the same. There is no material in respect thereof collected or produced alongwith charge-sheet, and therefore, there appears *prima facie* no material based on which at least regular, bail post submission of charge-sheet, can be refused.

7. This Court would not have released the present applicant, who is basically a law protector, who himself has breached the law but for absence of material brought on record to refuse regular bail, the investigating officer has

compelled this Court to release him on bail.

8. As such, from the papers of investigation, it appears that there appears no zeal to seriously book the applicant – accused with all possible material evidence against him by the investigating officer. The copy of the order be sent to the Superintendent of Police, Sabarkantha at Himatnagar as also to the Secretary, Home Department to take appropriate steps, if though fit.

9. In view thereof, the present application is allowed and the applicant is ordered to be released on regular bail in connection with FIR being C.R. No.11209049230039 of 2023 registered at Talod Police Station, District Sabarkantha on executing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety of the like amount to the satisfaction of the 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;
- [c] surrender passport, if any, to the lower court within a week;
- [d] not leave the India without prior permission of the concerned trial court;
- [e] furnish the present 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 concerned trial court;

10. The authorities will release the applicant only if he 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. Bail bond to be executed before the 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. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

11. Rule is made absolute to the aforesaid extent.  
Direct service is permitted.

**(UMESH A. TRIVEDI, J.)**

*siji*