

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR SUCCESSIVE REGULAR BAIL -
AFTER CHARGESHEET) NO. 9824 of 2023**

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BHARATKUMAR RAMABHAI PATEL
Versus
STATE OF GUJARAT

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Appearance:

MR. N. D. NANAVATY, SENIOR ADVOCATE with MR MUKESH KUMAR
SUDARSHAN(10268) for the Applicant(s) No. 1

MS HETU M SUDARSHAN(10051) for the Applicant(s) No. 1

MR. MANAN MEHTA, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Date : 20/10/2023

ORAL ORDER

1. By way of this application filed under Section 439 of the Code of Criminal Procedure, 1973, the applicant is seeking release on regular bail in connection with the FIR being **C.R.No. 11191045221193 of 2022 registered with Sola High Court Police Station, District Ahmedabad** for the offences punishable under Section 12 of the Passport Act, 1967 along with Sections 419, 420, 465, 467, 468, 471 and 120(b) of the Indian Penal Code.
2. Heard learned Senior Advocate Mr. N. D. Nanavaty with learned advocate Mr. Sudarshan with learned advocate Mr. N. K. Amin for the applicant and learned APP Mr. Manan Mehta appearing for the respondent - State.
3. As per the FIR registered by one Mr. Simpi, D.C.B. Police

Inspector alleged that the present applicant is involved in the criminal conspiracy of sending the people illegally to U. S. by way of creating fake passport and by creating fraudulent documents and by using the same as genuine documents with the help of other co-accused persons and thereby, he is cheating the Government of India as well as other countries and for that, the present applicant is charging huge amount. As per the FIR, there are 79 fake Indian passports were discovered at the instance of the present applicant and therefore, the FIR was registered.

4. Learned Senior Advocate Mr. N. D. Nanavaty appearing with learned advocate Mr. Sudarshan for the applicant made following submissions:-

- I. Investigation is over and charge-sheet is filed and therefore, considering the fact that though there are past antecedents reported against the present applicant by imposing the suitable stringent condition, the applicant may be enlarged on bail.
- II. The applicant was arrested on 13.12.2022 in respect of the offence under the Gambling Act and on the very next day i.e. 14.12.2022, another offence of similar nature was registered by D.C.B. Crime Police, Ahmedabad being C. R. No. 11191011220020 of 2022. The aforesaid FIR was registered in respect of similar offence and there the present applicant was enlarged on bail by learned Additional Sessions Judge, Court No. 4, City Civil Sessions Court, Ahmedabad vide order dated 04.01.2023 in Criminal Misc. Application No.

9136 of 2022.

III. According to learned Senior Advocate Mr. Nanavaty for the applicant, while the applicant was in custody and his bail application was kept for orders, before the present applicant could be enlarged on bail vide order dated 04.01.2023, another offence i.e. the offence registered by way of present FIR was registered on 28.12.2022, pursuant to which the applicant was arrested and therefore, as the applicant has already been enlarged on bail in respect of similar offence vide order dated 12.01.2023, the applicant may be enlarged on bail.

IV. Learned Senior Advocate Mr. Nanavaty submitted that the present applicant has been arrested on the basis of an FIR registered by Mr. Simpy, Police Inspector, D.C.B. Crime Police Station, he was the first informant and he was the investigator as well and therefore, in view of observations made by Hon'ble Supreme Court in case of Mohanlal V/s. State of Punjab reported in 2018 17 SCC 627, such practice would lead to an unfair trial and therefore, on that ground as well, the present applicant is required to be enlarged on regular bail.

5. Learned APP Mr. Manan Mehta appearing for the respondent - State vehemently opposed this application and submitted that the present applicant has a number of criminal antecedents and he is operating internationally. The present applicant is convicted even in U. S. in the year 1995, 1996, 1997, 1998 and 1999. In all there are seven convictions reported against the present applicant in U. S., the present

applicant was deported from United States in the year 2002 for the felonies of crimes involving Moral Turpitude (forgery and soliciting), alien smuggling and the aggravated felony of battery. He submitted that Consulate General of the United States of America has given the details about the activities of the present applicant and vide communication dated 04.10.2023 addressed to the Superintendent of Police, State Monitoring Cell (SMC), State of Gujarat has given the details about the past conviction as stated herein above in respect of the present applicant. He submitted that out of 79 passports discovered at the instance of the present applicant, seven passports were found to be fake and even three visa stickers were also found to be forged one as can be seen from the communication dated 22.08.2023 provided to the State Monitoring Cell (SMC), State of Gujarat by the Consulate General of the United States of America, Mumbai.

5.1. Learned APP Mr. Mehta submitted that as per the statement of various victims as well as witnesses, the present applicant used to collect a sum of Rs. 60 lakhs per person to Rs. 1.5 Crore per family for sending them to U. S. illegally. He submitted that the offence committed by the present applicant can be classified in eight different categories which are elaboratory stated in the affidavit in reply filed by State Government and on the basis of the aforesaid categories which are elaboratory described, learned APP demonstrated that the present applicant is involved in various modes and methods of sending the people illegally to U. S. whereby he has used the stolen passports of someone. He has created false parents, fake travel history and in the past successfully send the people

to foreign countries by using illegal modes and methods. He submitted that the present applicant has international contacts as the members of the present applicant syndicate are present in European countries as well as in Mexico and he has created false travel histories of the countries world around and that suggest that the present applicant has different routes internationally and therefore, if the present applicant is enlarged on bail, he is an accused who is having flight risk and there are all the chances that he may fly away and not available at the time of trial.

5.2. Learned APP Mr. Manan Mehta apart from drawing the attention of the Court to the seven conviction against the present applicant recorded in U.S. has brought to the notice of this Court the past antecedents in respect of the present applicant which are eight in number and by drawing the attention of this court to the past antecedents reported against the present applicant, learned APP points out that the offences under similar sections are registered against the present applicant at Bombay, Delhi, Calcutta and various other police stations wherein the some of the offences are registered at the relevant international Airport Police Station which would indicate the scale of activities of the present applicant.

5.3. Learned APP relied upon a decision of this Court dated 06.10.2023 in case of Dharmeshbhai Manilal Patel (Dharmeshbhai @ Dharmatma Patel) V/s. State of Gujarat in Criminal Misc. Application No. 14328 of 2023 and submitted

that in that application, this Court has by considering the criminal mindset and past criminal history of the applicant of that bail application has rejected the bail application preferred by that applicant. Considering the fact that the present applicant also is having past criminal antecedents and his convictions are recorded right from the year 1995 in U. S., he was deported from U. S. to India in the year 2002 and considering the fact that even after the petitioner was deported to India, the offences are registered against him as regular interval suggest about the scale of his criminal activities and his criminal mindset and therefore, he may not be enlarged on bail.

5.4. By making the aforesaid submissions, learned APP submitted that considering the antecedents and past track record of the present applicant, this Court may not exercise the discretion in favour of the present applicant as the applicant is having criminal mindset.

6. I have heard learned advocates for the respective parties and perused the record. I have considered the fact that there is voluminous material available against the present applicant in form of statements of various victims and witnesses which would indicate that the present applicant is involved in large scale activity of sending the people to foreign countries by creating fake passport and visa stickers and other documents as well as by creating false travel histories. The record also indicates that the present applicant is having contacts all over the world and by using different routes, he sending the people to foreign countries illegally.

7. I have also considered the fact the applicant is deported from 2002 and before deportation of the present applicant, the applicant was convicted in as many as 7 offences even in U.S. Even after he was deported and sent back to India, the present applicant seems to be have indulging into criminal activities as the criminal offences are registered against the present applicant in at regular interval.
8. The affidavit filed by Investigating Officer supported with the statement of Aangadiya Pedhi indicates that as many as Rs.1.5 crores are transferred at various point of time by way of 75 different transactions in the name of present applicant which would show that magnitude of scale of the present applicant of sending people to foreign countries.
9. On perusal of the statement of witnesses, prima facie, it seems that there are direct evidence against the present applicant as the statement gives an idea that the present applicant was directly dealing with the victims/ persons desirous to go to foreign countries illegally.
10. Considering the fact that there are eight antecedents reported against the present applicant in India, 7 convictions against the present applicant in U. S., prior to he was deported in the year 2002 would show that the present applicant consistently and constantly indulged into criminal activities. Further the offences registered against the present applicant at various police station in India also are registered under similar sections which would indicate that the present

applicant has committed similar kind of offences even at various cities in India. Considering the fact that the allegations against the present applicant are about creating forged passports and fabricated forged visa stickers of various foreign countries as well as it is coming out from the statement of various witnesses, prima facie, it seems that the present applicant is having contacts all over the world and therefore, looking to the nature of the allegations leveled against him about illegally sending the people to foreign countries and successfully allowing them to cross the border, there are all the chances that if the present applicant is enlarged on bail, he may utilize his international contacts all over the world for himself and may fly away. Therefore, considering the totality of facts and circumstances and material on record, I do not deem it appropriate to exercise the powers under section 439 of Criminal Procedure Code in favour of the present applicant. Therefore, the present application is required to be dismissed and the same is dismissed. Rule is discharged. No order as to costs.

VARSHA DESAI

(NIRZAR S. DESAI,J)