

to the statutory provisions providing for the minimum punishment. A useful reference can be made to the judgment of the Hon'ble Apex Court reported in (2004) 8 SCCF 307 in case of Aero Traders (P) Ltd. v. *Ravinder Kumar Suri*. It has been observed:

"6.According to Black's Law Dictionary "judicial discretion" means the exercise of judgment by a Judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right. The word "discretion" connotes necessarily an act of a judicial character, and, as used with reference to discretion exercised judicially, it implies the absence of a hard-and-fast rule,"

Therefore the judicious discretion has to be exercised depending upon the facts and circumstances as well as the material and evidence on record. Therefore, Criminal Appeal No. 1294 of 2011 filed by the Appellant / State of Gujarat for enhancement in the sentence also cannot be entertained and deserve to be dismissed and accordingly stands dismissed.

14. For the reasons stated above, both the Criminal Appeals filed by the Appellant / State of Gujarat deserve to be dismissed and accordingly stands dismissed.

Result:- Appeals dismissed.

**ABC 2016 (I) 516 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT**

(A.J. Desai, J.)

Criminal Misc.Application (For Regular Bail) No.5420 of 2016

Decided on 2 March, 2016

DEEPAK BABUBHAI SONI

- Applicant (s).

Versus

STATE OF GUJARAT

- Respondent(s).

Law Covered:- Code of Criminal Procedure, 1973 – Section 439 – Regular bail – Immoral Traffic (Prevention) Act, 1956 – Sections 3, 4, 5, 6, 7 & 9 – FIR under – Co-accused who is Manager

June 2016

a *of the Hotel has been enlarged on bail – investigation is over – charge-sheet is filed – Considering the offence as alleged in the FIR & also considering the nature of allegations – Bail granted. (Para 6)*

b **Held:-** Considering the offence as alleged in the FIR and also considering the nature of allegations made in the FIR and the fact that investigation is over and charge-sheet is filed and the fact that co-accused who is Manager of the Hotel has been enlarged on bail by this Court vide order dated 24.2.2016 passed in Criminal Misc. Application No.4816 of 2016, I am of the opinion that this is a fit case to exercise the discretion to enlarge the applicant on bail.

c **Counsel:-** For Appellant(s): Mr Darshan P Dave, Advocate.
For Respondent(s): Ms Moxa Thakkar, APP.

ORDER

d **A.J. DESAI, J.:** - 1. Rule. Ms. Moxa Thakkar, learned Additional Public Prosecutor waives service of rule on behalf of respondent - State. With the consent of parties, the matter is taken up for final disposal today itself.

e 2. This application is filed under Section 439 of the Code of Criminal Procedure for regular bail in connection with F.I.R. registered at C.R. No.II - 3466 of 2015 with Odhav Police Station, District Ahmedabad, for the offences punishable under Sections 3, 4, 5, 6, 7 and 9 of The Immoral Traffic (Prevention) Act, 1956.

3. Learned advocate for the applicant submits that considering the nature of offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

f 4. The learned APP opposes the grant of bail looking to the nature and gravity of offences.

5. Learned advocates appearing on behalf of the respective parties do not press for further reasoned order.

g 6. I have heard learned advocates appearing for the parties.

h Considering the offence as alleged in the FIR and also considering the nature of allegations made in the FIR and the fact that investigation is over and charge-sheet is filed and the fact that co-accused who is Manager of the Hotel has been enlarged on bail by this Court vide order dated 24.2.2016 passed in Criminal Misc. Application No.4816 of 2016, I am of the opinion that this is a fit case to exercise the discretion to enlarge the applicant on bail. Hence, the

application is allowed and the applicant is ordered to be released on bail in connection with C.R. No.II - 3466 of 2015 with Odhav Police Station, District Ahmedabad, on executing a bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with local 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 State of Gujarat without prior permission of the Sessions Judge concerned;

[e] mark presence at the concerned Police Station on every Monday of each English Calendar month for a period of six months and thereafter any day of the first week of every English calendar month till the trial is over, between 11.00 a.m. and 2.00 p.m.;

[f] furnish the present address of residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

7. 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 observations of preliminary nature, qua the evidence at this stage, made by this Court while enlarging the applicant on bail.

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

Result:- Bail granted.
