

(2020) 07 GUJ CK 0033

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 9369 Of 2020

Akbar Ismail Samat Mathda

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 22-07-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 143, 147, 148, 149, 302, 307, 323, 324, 325, 326

Gujarat Police Act, 1951 — Section 135

Citation : (2020) 07 GUJ CK 0033

Hon'ble Judges : Bhargav D. Karia, J

Bench : Single Bench

Advocate : Darshan M Varandani, C.M. Shah

Final Decision : Allowed

Judgement

Bhargav D. Karia, J

1. Heard learned advocate Mr. Darshan M. Varandani for the applicants, learned advocate Mr. Chintan Popat for the original complainant and

learned Additional Public Prosecutor Ms. C.M. Shah for the respondent. State through video conference.

2. Learned advocate Mr. Chintan Popat seeks permission to file his vakalatnama on behalf of the original complainant. Permission as prayed for is granted.

3. This application is filed by the applicants under Section 439 of the Code of Criminal Procedure, 1973 for regular bail in connection with F.I.R.

registered as C.R.No. IÅ57 OF 2019 with Kandla Marine Police Station, District Kachchh for the offences punishable under Sections 302, 307, 326,

325, 324, 323, 143, 147, 148 and 149 of the Indian Penal Code, 1860 and

Section 135 of the Gujarat Police Act.

4. Learned advocate for the applicants have submitted that the allegations made against the applicants are vague and they have been falsely

implicated in the alleged offence. He has further submitted that the applicants have been arrested on 23.12.2019 and have been incarcerated since

then. Learned advocate has also submitted that the applicants have no antecedents. He has also submitted that the co-accused Kursaben Mathda

and Hawaben Sodha have been granted regular bail by this Court vide order dated 05.05.2020 in Criminal Misc. Application No.6515 of 2020 as well

as co-accused Fatmaben Meman, Rahimaben Meman and Amrabanu Meman has also been granted regular bail by this Court vide order dated

18.05.2020 in Criminal Misc. Application No.6669 of 2019 and hence, the learned advocate has urged before this Court that the present applicants

may be enlarged on regular bail.

5. On the other hand, the learned Additional Public Prosecutor appearing for the respondent-State has opposed grant of regular bail looking to the

nature and gravity of the offence.

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

7. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers. Following aspects are considered:—

i) The applicants are in custody since 23.12.2019;

ii) The investigation is concluded and charge-sheet is filled;

iii) Co-accused of the present F.I.R. have been enlarged on bail by this court;

iv) Considered the role of the applicants for the alleged offences by inflicting knife blows upon the injured person — Sharbanu who has been discharged

from the hospital;

v) Learned Additional Public Prosecutor, under the instructions of the Investigating Officer, is unable to bring on record any special circumstances

against the applicants;

vi) This Court has taken into consideration the law laid down by the Apex Court in the case of Sanjay Chandra v. Central Bureau of Investigation,

[2012] 1 SCC 40.

8. Having regard to the above submissions and in the facts and circumstances of

the case and considering the nature and gravity of accusation made against the applicants in the F.I.R., this Court is of the view that discretion is required to be exercised in favour of the applicants for grant of bail and, since there is no possibility of tampering with the evidence as charge sheet is already submitted. Moreover, the applicants assure that they will abide by the terms and conditions that may be imposed by the Court and shall not commit any breach.

9. Further I do not intend to go into the merits of the matters and I am persuaded to exercise my discretion in favour of the applicants. The investigation is over and the charge sheet has already been filed and the trial would take a considerable long period of time.

10. Hence, the present application is allowed. The applicants are ordered to be released on regular bail in connection with C.R.No.IA57 OF 2019 with Kandla Marine Police Station, District Kachchh, on executing personal bond of Rs.10,000/ (Ten Thousand) each with one surety of like amount to the satisfaction of the trial Court and subject to the conditions that they shall;

(a) not take undue advantage of liberty or misuse liberty;

(b) not act in a manner injurious to the interest of the prosecution & 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;

(d) not leave the State of Gujarat without prior permission of the Trial Court concerned;

(e) mark presence before the concerned Police Station once in a month for a period of six months between

11.00 a.m. and 2.00 p.m.;

(f) furnish the present address of their 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 Trial Court;

(g) shall not enter District: Kutchh for a period of six months except for marking presence before the concerned Police Station and attending the court proceedings;

11. The authorities will release the applicants only if they are 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.

12. 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.

13. 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 applicants on bail.

14. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent. Registry is directed to intimate the concerned jail

authority and the concerned Sessions Court about the present order by sending a copy of this order through Fax message, email and/or any other

suitable electronic mode. Direct Service is permitted.

15. Learned advocate for the applicants is also permitted to send a copy of this order to the concerned jail authority and the concerned Sessions Court

through Fax message, email and/or any other suitable electronic mode.