

(2023) 12 GUJ CK 0077

In the Gujarat High Court

Case No : ?R/Criminal Misc.Application (For Regular Bail - Before Chargesheet)
No. 22936 Of 2023

Alkeshbhai @ Saibo Parvatsinh Rathod

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 22-12-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 306

Citation : (2023) 12 GUJ CK 0077

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : H N Sevak, Chintan Dave

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. Learned advocate for the applicant seeks permission to withdraw the present application qua applicant No.1-Alkeshbhai @ Saibo with a liberty to file a fresh application after filing of the charge-sheet.

2. Permission as prayed for, is granted. The present application is disposed of as withdrawn qua applicant No.1 with the above liberty.

3. Rule. Learned APP waives service of notice of Rule on behalf of respondent-State.

4. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail qua applicant Nos. 2 & 3 in connection with C.R. No. 11204028230466 of 2023 registered with the Kapadwanj Rural Police Station, District Kheda for the offence punishable under Sections 306 and 114 of the Indian Penal Code.

5. Learned advocate Mr. Sevak appearing on behalf of the applicants has

submitted that so called incident has occurred on 23.11.2023 and on the same day the FIR was registered. The applicants were arrested on 28.11.2023, since then they are in judicial custody. It is also submitted that investigation is not completed and charge sheet has yet not been filed. The applicants No. 2 & 3 are brother-in-law of applicant No.1. It is alleged that the applicants had told to the deceased that she has to adjust with the situation except that there is no specific role is attributed against the present applicants. It is further submitted that the matter is settled between the parties out side of the Court. Considering the role attributed by the present applicants as well as factual aspect, the present applicants may be enlarged on regular bail by imposing suitable terms and conditions.

6. Learned APP appearing on behalf of the respondent-State has opposed the present bail application. It is submitted that the role of the present applicants is clearly spelt out from the body of the FIR. Considering the role attributed by the present applicants at the time of commission of offence, the present application may not be considered.

7. Learned advocate Mr. S.J. Zala, who appears on behalf of original complainant has submitted that the matter is settled between the parties out side of the Court. In this regard, he has tendered an affidavit on behalf of the first informant, which is taken on record. He has also submitted that the complainant has no objection if the present application is allowed. Learned Advocate seeks permission to file his Vakalatnama. Registry to accept the same and place it on record.

8. I have perused the police papers as well as documents produced by the applicants along with the memo of the application. It is found out from the record that so called incident has occurred on 23.11.2023 and on the same day the FIR was registered. The applicants were arrested on 28.11.2023, since then they are in judicial custody. The investigation is not completed and charge sheet has yet not been filed. The applicants No. 2 & 3 are brother-in-law of applicant No.1. The only role of the applicants is that they had told to the deceased that she has to adjust with the situation except that there is no specific role is attributed against the present applicants. The matter is settled between the parties out side of the Court. Considering the role attributed by the present applicants, I am inclined to exercise the discretion in favour of the applicants.

9. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. Central Bureau of Investigation, reported in [2012]1 SCC 40 as well as in case of Satender Kumar Antil v. Central Bureau of Investigation & Anr. reported in (2022)10 SCC 51.

10. In the facts and circumstances of the case and considering the nature of the allegations made against the applicants in the FIR, without discussing the evidence in detail, prima facie, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

11. Hence, the present application is allowed and the applicants are ordered to be released on regular bail in connection with C.R. No. 11204028230466 of 2023 registered with the Kapadwanj Rural Police Station, District Kheda, on executing a personal bond of Rs. 15,000/- (Rupees Fifteen Thousand only) each with one surety of the 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;

[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 before the concerned Police Station on alternate Monday of every English calendar month for a period of six months between 11:00 a.m. to 2:00 p.m.;

[f] 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 this Court;

12. The authorities will release the applicant 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. 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 present application stands allowed accordingly. Rule made absolute to the aforesaid extent.

Direct service is permitted.