

(2024) 03 GUJ CK 0047
In the Gujarat High Court

Case No : R/Criminal Appeal (Regular Bail - After Chargesheet) No. 1321 Of 2023

Alok Shrikant Yadav

APPELLANT

Vs

State Of Gujarat & Anr

RESPONDENT

Date of Decision : 13-03-2024

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 14A

Indian Penal Code, 1860 — Section 201

Citation : (2024) 03 GUJ CK 0047

Hon'ble Judges : J. C. Doshi, J

Bench : Single Bench

Advocate : Kishan H Daiya, HK Patel

Final Decision : Allowed

Judgement

J. C. Doshi, J

Though Rule is served to the respondent no.2, none appears.

1. By way of the present appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, the 'Act, 1989'), the appellant – original accused has prayed to release him on regular bail in connection with FIR being C.R.No.I-208 of 2019 registered with Dindoli Police Station, Surat.

2. Learned advocate for the appellant submits that reading FIR as it is as well as charge-sheet papers, no evidence is available against the appellant - accused, except statement of co-accused which has no relevance in evidence, as charge-sheet is filed. There is no recovery or discovery of any weapon in the offence at the instance of the appellant. Present appellant is behind bar since 02.10.2020. Only one witness is examined, there are as many as 72 witnesses in the charge-sheet papers. There is no chance that Sessions Case against the appellant shall be completed within near future. The prosecution is trying to establish motive by

saying that there was business rivalry between the deceased and the appellant and the appellant had hired sharp shooters to eliminate deceased. No evidence is coming from the statement of the witnesses. Even last seen together is not established considering statement of witnesses. In addition thereto, it is submitted by learned advocate for the appellant that all the co-accused who have played identical role in commission of offences are enlarged on regular bail by this Court or learned Trial Court. Therefore, it is submitted to enlarge the appellant on regular bail.

3. On the other hand, learned APP heavily objected the present bail appeal on the submission that there are two statement of the witnesses, who have stated that they have shown house of the deceased to the present appellant, upon inquiry from the appellant and they have also seen that the appellant was going towards house of the deceased, which prima facie establish last seen together. It is submitted that in the statement of witness - Harsh Yadav, it is stated that he has seen video from the mobile of present appellant, whereby, it is recorded that present appellant and other co-accused were beating deceased to kill and that video has been transferred in Pen Drive by some other device. Unfortunately, Pen Drive has not been recovered and video from the mobile is deleted. In these circumstances, section 201 of IPC is also invoked. Therefore, present appellant had motive as he had business rivalry with the deceased. Therefore, the appellant may not be granted regular bail.

4. Having heard the learned counsel for the parties and perusing the record of the case and taking into consideration the facts of the case, nature of allegations, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to exercise discretion in favour of the appellant for the following reasons : -

(i) The appellant - accused is behind bar since 02.10.2020. It is long pre-trial incarnation time period.

(ii) Only one witness has been examined by the learned Sessions Judge, which is indicated from the report forwarded by the learned Sessions Judge.

(iii) Other accused are enlarged on regular bail by this Court or learned Trial Court, whose role is similar to the role of the present appellant.

(iv) The prosecution relies on circumstantial evidence and last seen theory. The motive is centripetal in circumstances evidence. The motive of business rivalry is stated in the present case, but to substantiate the same, no prima facie evidence is available in the charge-sheet papers.

(v) Learned APP referred to statement of witnesses to establish last seen theory. On reading statement of those witnesses, this Court is not inclined to accept the submission that they are persons who have seen deceased with the accused. Even otherwise, last seen together is weak piece of evidence.

5. In the result, the present appeal is allowed. The appellant is ordered to be

released on bail in connection with FIR registered as C.R.No.I-208 of 2019 registered with Dindoli Police Station, Surat on executing bond of Rs.10,000/- (Rupees Ten Thousand only) with one surety of like amount to the satisfaction of the Trial Court and subject to the conditions that the appellant 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] not leave the territory of India without prior permission of the Sessions Judge concerned;

[d] appear before the Investigation Officer concerned, as and when required for investigation purpose and attend Court concerned regularly.

[e] furnish the present address of residence along with the proof to the I.O. concerned and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of Sessions Court concerned;

6. The competent authority will release the appellant 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 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 to the concerned Court to delete, modify 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 appellant on bail.

7. The appeal succeeds. Direct service is permitted.

8. Before parting with the order, I would like to state two things. Firstly, the above observations are limited to decision of present bail appeal. Secondly, Sessions Case is registered in the year 2020 and in the year 2024, learned Sessions Judge has recorded deposition of one witness. Learned Sessions Judge though has forwarded detail explanation, yet it is duty of the learned Sessions Judge to conduct the trial considering the aspect that speedy trial is fundamental right of the accused.