

(2021) 08 GUJ CK 0044

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 3564 Of 2021

Ankurkumar @ Kukdo Namdevbhai Mavjibhai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 18-08-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 439

Indian Penal Code, 1860 — Section 302, 392

Arms Act, 1959 — Section 25(1)(b)(a)

Gujarat Police Act, 1951 — Section 135

Citation : (2021) 08 GUJ CK 0044

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : Yash K Dave, Vishal K Anandjiwala, Nisha Thakor

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the I-C.R.No.86 of

2018 registered with Bhiloda Police Station, Aravalli of the offence punishable under Sections 302 and 392 of the Indian Penal Code, under Sections

25(1)(b)(a) of the Arms Act and under Section 135 of the Gujarat Police Act.

2. Learned Advocate appearing on behalf of the applicants submits that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

3. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.

4. Learned Advocates appearing on behalf of the respective parties do not press

for further reasoned order.

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

I. The FIR is registered on 13.11.2018 for the offence which is alleged to have taken place on 13.11.2018.

II. The applicants are in jail since 05.12.2018.

III. The investigation is concluded and charge-sheet is filed.

IV. The application is preferred on the strength of liberty reserved vide order dated 03.10.2019.

V. Submission of learned advocate for the applicants that even after the investigation, there is no evidence connecting the applicants with the offence

more particularly despite there being allegation of firing, there is no recovery or discovery of firearm.

VI. Submission of learned advocate for the applicants that two co-accused have been enlarged on regular bail and hence, by applying the principle of parity.

VII. The only witness Navin whose statement under Section 164 of the Code of Criminal Procedure is recorded, has turned hostile.

VIII. Considering the age of the applicants being 23 and 22 years respectively.

IX. Learned APP under instructions of IO is unable to bring on record any special circumstances against the applicant.

6. 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 applicants on regular bail.

7. Hence, the present application is allowed. The applicants are ordered to be released on regular bail in connection with I-C.R.No.86 of 2018

registered with Bhiloda Police Station, Aravalli on executing a personal bond of Rs.10,000/- (Rupees Ten 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 & 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;

(c) surrender passport, if any, to the Trial Court within a week;

(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 his 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;

8. 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.

9. 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.

11. 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.

11. Rule is made absolute to the aforesaid extent.

Direct service is permitted.