

(2022) 02 GUJ CK 0024

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 18015 Of 2021

Ashish Ashokbhai Tandel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-02-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 120(B), 147, 148, 149, 302
Gujarat Police Act, 1951 — Section 135

Citation : (2022) 02 GUJ CK 0024

Hon'ble Judges : Rajendra M. Sareen, J

Bench : Single Bench

Advocate : Zubin F Bharda, RC Kodekar

Final Decision : Allowed

Judgement

Rajendra M. Sareen, J

[1] The present application is filed under Section 439 of the Code of Criminal Procedure by the applicant for regular bail in connection with an FIR

being C.R.No.11822006210319 of 2021 registered with Bilimora Police Station, District : Navsari for the offences under Sections 302, 147, 148, 149,

34 and 120(B) of the Indian Penal Code and under section 135 of Gujarat Police Act.

[2] Mr.Bharda, learned advocate for the applicant submits that upon registration of the FIR, the applicant has been arrested on 17/3/2021 and since

then the applicant is in custody. He has further submitted that the applicant is absolutely innocent and has not committed any offence, as alleged and in

fact, the entire case of prosecution so far as the applicant is concerned, is concocted and false. In fact, the applicant came to be implicated in

commission of such a serious offence by the prosecution as the deceased Nimesh and his family; members had an axe to grind against the applicant.

If the allegation levelled in the FIR are considered, then what is alleged is that while the deceased was being taken to Gupta Hospital, Bilimora after

he sustained injuries, he informed the complainant and his son Kalpesh as well as Hardikbhai, Arvindbhai and Mukeshbhai that he was assaulted by

Manoj @ Pada with an axe on his head and four to five persons assaulted upon him with iron pile and rod and thereby caused injuries on his head, parts

of nose on his hand and legs, whereas according to the complainant his son named the presence of about 13 persons without any kind of overt act

against at least 8 persons including the applicant out of 13 persons named by the deceased. Thus, it is clear that the applicant is falsely implicated in

the offence and allegation against the applicant is also vague and general without attributing any overt act to the applicant or even without attributing

any weapon in the hands of the applicant. The allegation against the applicant is that he was keeping watch to see that no one comes to rescue the

deceased. He has submitted that the applicant has not inflicted any blow on the deceased and as per the allegation, he was having iron rod without

any overt act. He has submitted that there are five antecedents, out of which, in two offences, the applicant has been acquitted and three offences are

stale offences wherein also the applicant is released on bail. He has submitted that the applicant is local resident and would be easily available at the

time of trial. He has submitted that since the investigation is over and chargesheet has been filed, the case of the applicant may be considered for bail.

Learned advocate for the applicant submits that considering the nature of allegations, role attributed to the applicant, the applicant may be enlarged on

regular bail by imposing suitable conditions.

[3] Mr.Kodekar, learned Additional Public Prosecutor appearing on behalf of the respondent-State has opposed grant of regular bail looking to the

nature and gravity of the offence. He has further submitted that this is not a fit case to exercise discretion in favour of the applicant.

[4] I have heard learned advocates appearing on behalf of the respective parties. Learned advocates appearing on behalf of the respective parties do

not invite reasoned order.

[5] This Court has also taken into consideration the law laid down by the Apex

Court in the case of Sanjay Chandra versus Central Bureau

Investigation, reported in (2012) 1 SCC 40.

[6] In the facts and circumstances of the case and considering the nature of allegations made against the applicant in the FIR, I am of the opinion that

discretion is required to be exercised in favour of the applicant and enlarge the applicant on regular bail.

[7] This Court has considering the following aspects:

(i) The applicant is in jail since 17/3/2021.

(ii) Investigation is over and charge sheet is filed.]

(iii) role attributed to the applicant is that he was standing with iron road preventing others from the place where the deceased was assaulted by other accused.

(iv) No overt act has been attributed to the applicant.

(v) The applicant is local resident and would be available at the time of trial.

[8] In the result, the present application is allowed and the applicant is ordered to be released on regular bail in connection with an offence being

C.R.No.11822006210319 of 2021 registered with Bilimora Police Station, District : Navsari on executing a personal bond of Rs.15,000/- (Rupees

Fifteen Thousand Only) with one surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that the applicant

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 India without prior permission of the Sessions Judge concerned;

[e] mark presence before the concerned Police Station once between 1st and 5th day of every English calendar month for a period of six months.;

[f] furnish latest and permanent address of residence as well as mobile number 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;

[g] not to enter in Bilimora and village Antaliya where the complainant resides for a period of six months except for marking his presence before the

concerned police station.

[9] The authorities shall adhere to its own Circular relating to COVID-19 and, thereafter, 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.

[10] Rule is made absolute to the aforesaid extent.

Direct Service is Permitted. Over and above Direct Service, Registry to communicate this order to the concerned Jail Authority by Fax or Email

forthwith.