

(2023) 12 GUJ CK 0078
In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - After Chargesheet) No. 22889 Of 2023

Ashokbhai Dalabhai 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 143, 147, 148, 149, 307, 323, 324, 427, 504, 506(2)
Indian Penal Code, 1860 — Section 395
Gujarat Police Act, 1951 — Section 135
Arms Act, 1959 — Section 25 (1b)(a)

Citation : (2023) 12 GUJ CK 0078

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Arbaazkhan A Pathan, Mohamadzaid I Saiyed, Chintan Dave

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

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

2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with C.R. No. 11189005231661 of 2023 registered with the Morbi Taluka Police Station, District Morbi for the offence punishable under Sections 143, 147, 148, 149, 427, 307, 323, 324, 504, 506(2) and 395 of the Indian Penal Code, Section 135 of the Gujarat Police Act and Section 25 (1-b)(a) of the Arms Act.

3. Learned advocate Mr. Saiyed appearing on behalf of the applicant has submitted that so called incident has occurred on 25.08.2023 and FIR was registered was registered on 26.08.2023. The applicant was arrested on

19.09.2023, since then he is in judicial custody. It is also submitted that the investigation is already completed and the present application is filed after submission of the charge-sheet. It is further submitted that the injured victim has already been discharged from the hospital. It is also submitted that similarly situated co-accused persons, whose role is lessor and graver than the present applicant have already been enlarged on bail by this Court and therefore on the ground of parity, the present applicant may also be enlarged on regular bail by imposing suitable terms and conditions.

4. Learned APP appearing on behalf of the respondent-State has opposed the present bail application. It is submitted that the role of the present applicant is clearly spelt out from the body of the compilation of the charge sheet papers. Considering the role attributed by the present applicant, the present application may not be considered.

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

6. I have perused the police papers as well as documents produced by the applicant along with the memo of the application. It is found out from the record so called incident has occurred on 25.08.2023 and FIR was registered was registered on 26.08.2023. The applicant was arrested on 19.09.2023, since then he is in judicial custody. The investigation is already completed and the present application is filed after submission of the charge-sheet. The injured victim has already been discharged from the hospital. Similarly situated co-accused persons, whose role is lessor and graver than the present applicant have already been enlarged on bail by this Court. Considering the principle of law of parity, I am inclined to exercise the discretion in favour of the applicant

7. 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.

8. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant 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.

9. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with C.R. No. 11189005231661 of 2023 registered with the Morbi Taluka Police Station, District Morbi, 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 trial Court and subject to the conditions that he 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;

10. The authorities 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. 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.

12. The present application stands allowed accordingly. Rule made absolute to the aforesaid extent.

Direct service is permitted.