

(2023) 05 GUJ CK 0121

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9081 Of 2023

Bharatbhai Nathabhai Sorani

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 29-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 120(B), 323, 325, 326, 394, 395, 397, 506(2)

Gujarat Police Act, 1951 — Section 135

Citation : (2023) 05 GUJ CK 0121

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Ashish M Dagl, Amruta A. Bharadwaj, K S Chandrani, Manan Mehta

Final Decision : Allowed

Judgement

Hasmukh D. Suthar, J

1. Rule returnable forthwith. The learned APP waives service of notice of rule for and on behalf of the 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.11208037230209 of 2023 registered with Kuwadava Road Police Station, Rajkot for the offences punishable under Sections 323, 325, 326, 120B, 506(2), 394, 395 and 397 of the Indian Penal Code and Section 135 of the Gujarat Police Act.

3. Heard learned advocate Mr.Ashish M. Dagli, appearing on behalf of the applicants, learned advocate Ms.Amruta A. Bharadwaj, appearing for the learned advocate Mr.K.S.Chandrani, for the original complainant and Learned Additional Public Prosecutor Mr.Manan Mehta, for the respondent – State.

4. Learned advocate appearing on behalf of the applicants has submitted that the applicants are innocent and no offence is made out against the present accused as the allegation made in the complaint that the alleged injury is not caused by

the present applicants, even if it is considered that the applicants have caused the grievous injury to the complainant, even though he is discharged from the hospital. So far the allegation of injury is concerned, the applicant No.2 has given kick and fists blows and the entire story is cooked up only with a view to show gravity of offence. Even there is no any criminal antecedents of the present applicants. Muddamal is also recovered. The alleged offence is nothing but a political vendetta, substantial investigation qua the present applicants is over. The present applicants are law abiding citizens and they may be released on regular bail by imposing suitable conditions. There is no possibility of tempering with the evidence and flee away from the justice. He has further submitted that the applicants are having deep rooted in the society, if they are not enlarged on bail their family have to face starvation.

5. Per contra, the learned APP appearing on behalf of the respondent-State and the learned advocate appearing for the original complainant both have vehemently opposed the grant of regular bail looking to the nature and gravity of the offence. They have submitted that the applicants are headstrong personality and having criminal antecedents, since two offences are registered against the present applicants and if they are enlarged on bail, the possibility cannot be ruled out to flee away from the justice and administered threat to witnesses and hamper the investigation as the applicants are highly influencing people.

6. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers of the investigation and considered the allegations levelled against the applicants and the role played by the applicants. The complaint is produced at Annexure-A, which is filed at the instance of one Bhagwanbhai Savjibhai Jinjariya. It is alleged that the earlier complaint is filed against the accused Bharatbhai Sorani (applicant No.1), Ajaybhai Nathabhai Sorani, keeping grudge by hatching the conspiracy, accused – Bharatbhai (applicant No.1) has made an assault by pipe and applicant No.2 Bachubhai Vallabhbai Saria has made an assault by kick and fists blows and abused the language and they have snatched the gold chain, cash of Rs.25,000/- and the licenced arm alleging that the said fact, the complaint is being lodged. The medical certificate issued by the Synergy Superficiality Hospital is also produced on record. Going though the said certificate, it appears that the complainant has sustained injury of comminuted tibia fracture on right febula shaft fracture. The said assault is being made by the accused No.1 (applicant No.1) injured, was operated, then he was discharged and at present, he is out of danger. Even so far allegation against the applicant No.2 is concerned, the allegation against the applicant No.2 is only made an assault by kick and fists blows to the witness. Even if we considered the role attributed to the applicant No.1 injured and is discharged form the hospital and now he is out of danger . The present applicants are arrested on 21.04.2023, muddamal was also recovered and the substantial part of the investigation is over. At present, nothing further is required to be recovered and discovered from the accused.

7. While granting bail, the Court has to consider the involvement of the accused in the alleged offence, the jurisdiction to grant bail has to be exercised on the basis of the well settled principles having regard to the facts and circumstances of each case and the following factors are to be taken into consideration while considering an application for bail: (i) the nature of accusation and the severity of the punishment and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses and threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations are required to be considered.

8. 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. The present application deserves to be allowed to allay the apprehension of tampering with the evidence and breach of public tranquility, which alleged by the original complainant as the applicants are residing at Rajkot City and the incident takes place at village Badla, considering the distance between two places there is no possibility of breach of peace. So far criminal antecedent is concerned, learned advocate Mr.Bhardawaj, has argued about the criminal antecedents of the applicants. I have given thoughtful consideration qua said argument, if we perused the record, the affidavit is filed by the Investigating Officer before the learned Sessions Judge, wherein he in column No.31, said 'NO', but learned advocate Mr.Dagli has fairly stated that two offences under the prevention of the Gambling Act are registered and in one the accused is acquitted and one is pending. But it is needless to say that, as per cardinal principle of criminal jurisprudence, there is presumption that until and unless the offence proved beyond all reasonable doubts against the accused, he is innocent. "Bail is Rule and jail is an Exception" as substantial part of the investigation is over and nothing is required to recover or discover from the accused no purpose would be served to keep the applicants behind the bar, which is nothing but amounts to pre-trial conviction, considering the concept of personal liberty and 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.

9. Hence, the present application is allowed and the applicants are ordered to be released on regular bail in connection with C.R.No.11208037230209 of 2023 registered with Kuwadava Road Police Station, Rajkot, on executing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand), each 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 prejudice to the interest of the prosecution and temper with evidence or witnesses;

[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 till filing of charge sheet between 11:00 a.m. and 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 concern Court;

10. The authorities will release the applicants only if they are 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.

11. 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.

12. At the trial, the trial Court shall not be influenced by the observations made in the order. Rule is made absolute to the aforesaid extent.

Direct service is permitted.