

(2023) 06 GUJ CK 0116
In the Gujarat High Court
Case No : R/Criminal Appeal No. 972 Of 2023

Bipin @ Jigo Arunbhai Padaya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 27-06-2023

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(2)(5), 3(2)(5a), 14(A)(2)
Indian Penal Code, 1860 — Section 34, 143, 144, 147, 148, 149, 302, 307, 323, 326
Gujarat Police Act, 1951 — Section 135

Citation : (2023) 06 GUJ CK 0116

Hon'ble Judges : Nirzar S. Desai, J

Bench : Single Bench

Advocate : Hardik A Dave, Manan Mehta, Mihir Patel

Final Decision : Allowed

Judgement

Nirzar S. Desai, J

Learned advocate Mr.Mihir Patel seeks permission to appear on behalf of original complainant - Respondent No.2. Permission as prayed for is granted. Registry to accept the vakalatnama of learned advocate Mr.Patel as an advocate appearing for original complainant.

1. Heard learned advocate Mr.Dave for the applicant, learned advocate Mr.Mihir Patel for original complainant and learned Additional Public Prosecutor Mr.Mehta for the respondent – State.

2. By way of the present successive appeal under Section 14 (A)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, the applicant accused has prayed to release him on regular bail in connection with Part-A 11210021211752 of 2021 registered with Katargam Police Station, Surat for the offences punishable under Sections 302, 307, 326, 323, 143, 144, 147, 148, 149 and 34 of IPC, Section 135 of the GP Act and 3(2)(5) and 3(2)(5a) of

Atrocity Act.

3.1 Learned advocate for the applicant submitted that, the applicant is not involved in commission of offence as alleged in the FIR and, therefore, looking to the role of the applicant and nature of the allegations, the applicant is required to be enlarged on regular bail by imposing suitable terms and conditions.

3.2 Learned advocate Mr.Hardik Dave pointed out that vide order dated 03.08.2022 the Coordinate Bench had while permitting the applicant to withdraw the appeal, granted liberty to approach the sessions court after the period of six months and in view of aforesaid liberty the applicant had approached the sessions Court by filing Criminal Miscellaneous Application No.2456 of 2023 which was dismissed vide order dated 05.04.2023 and that is how the present successive bail application is preferred.

4. On the other hand, learned advocate Mr.Mihir Patel for the original complainant and learned APP appearing for the respondent – State vehemently oppose the application and submit that considering the gravity of offence and considering the fact that the present applicant has actively participated in the offence, he may not be enlarged on bail. It is submitted that the offence committed by the present applicant is serious in nature affecting the society at large and looking to the facts as well as the allegations made against the applicant, no discretion would be required to be exercised.

5. In the facts and circumstances of the case and considering the nature of allegations, this Court is of the opinion that, discretion is required to be exercised to enlarge the applicant on regular bail. This Court has considered the following facts while exercising discretion in favour of the applicant :-

(i) the applicant is in jail since 30.11.2021;

(ii) the investigation is over and the charge-sheet is filed;

(iii) no past antecedent is attributed to the applicant;

(iv) the applicant is not named in the original FIR which was registered on 28.11.2021;

(v) thereafter as many as 9 witnesses had given their statement on 28.11.2021 wherein also none of the witnesses named the present applicant and the name of the present applicant for the first time is surfaced in the statement of Deepak which was recorded on 22.12.2021 which is almost after a period of 25 days after the statements of 9 witnesses were recorded. In fact, statement of Deepak was recorded earlier on 28.11.2021 and at that time witness Deepak did not name the present applicant;

(vi) even otherwise the only role attributed to the present applicant is that he gave kick and fist blows to the deceased person.

6. In view of the aforesaid facts, without discussing the evidence in detail, this

Court, prima facie, is of the opinion that, this is a fit case to exercise the discretion and enlarge the applicant on regular bail. Hence, present application is allowed and the applicant is ordered to be released on regular bail in connection with Part-A 11210021211752 of 2021 registered with Katargam Police Station, Surat on executing personal bond of Rs.10,000/-(Rupees Ten thousand only) with one surety of the like amount to the satisfaction of the learned 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 India without prior permission of the Sessions Judge concerned;

[e] furnish latest 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 the trial Court;

[f] mark his presence before the concerned police station in the first week of every month till the trial is over;

7. The Authorities will release the applicant only if the applicant 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 learned 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. At the trial, learned 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.

8. Rule is made absolute to the aforesaid extent. Direct service is permitted.