

(2022) 09 GUJ CK 0165
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 14946 Of 2022

Dhuna Karshan Koli (Bhut)

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 27-09-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 143, 147, 148, 149, 294(B), 302, 506(2)
Gujarat Police Act, 1951 — Section 135

Citation : (2022) 09 GUJ CK 0165

Hon'ble Judges : Nirzar S. Desai. J

Bench : Single Bench

Advocate : DM Devnani, Pravin Gondaliya, Maithili Mehta

Final Decision : Allowed

Judgement

Nirzar S. Desai, J

1 Heard learned advocate Mr.D.M.Devnani for the applicant and learned Additional Public Prosecutor Ms. Maithili Mehta for the respondent – State.

2 This application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 for regular bail in connection with the FIR registered at C.R.No.11993004220091 of 2022 registered with Bhachau Police Station, Kachchh for the offence punishable under Sections 302, 34, 143, 147, 148, 149, 506(2), 294(B) of the Indian Penal Code and under Section 135 of the Gujarat Police Act.

3 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.

4 On the other hand, learned APP appearing for the respondent – State opposed grant of regular bail looking to the nature and gravity of the offence.

4.1 Mr.Pravin Gondaliya, learned advocate for the original complainant also vehemently opposed the application and submitted that the present applicant has abetted the crime as the crime had happened in their presence. He further submitted that the present applicant has travelled along with the injured person. He further submitted that instead of taking the injured deceased to the hospital, the applicant has abetted and participated in the per-planned cold blooded murder, and therefore, the application is required to be rejected.

5 In response to the above submissions, Mr.Dharmesh Devnani, learned advocate for the applicant, submitted that motive and whether the applicant could have been taken to hospital or not are matter of evidence and even as per the FIR itself it was categorically stated that the deceased was taken to two hospitals, where the doctors have shown their inability to treat the injured person and thereafter ultimately he was admitted to Civil Hospital, Ahmedabad. Learned advocate for the applicant further submitted that the deceased was alive till 23.3.2022 when he was handed over, and therefore, the applicant is required to be enlarged on regular bail.

6 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:-

[a] The applicant is in jail since 29.3.2022.

[b] Investigation is over and charge sheet is filed.

[c] As per the statement of Vanita, the applicant arrived Sanand at 5.00 in the morning and before that the deceased was beaten and his head was dashed with the wall and as per the postmortem report cause of death is cardio respiratory failure due to head injury.

[d] No antecedents except for one offence under Prohibition Act in the year 2012.

7 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 the FIR registered at C.R.No.11993004220091 of 2022 registered with Bhachau Police Station, Kachchh 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 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] not to leave the Gujarat without prior permission of the Sessions Judge concerned;

[d] surrender passport, if any, to the lower court within a week;

[e] furnish the present address of residence along with the proof to the Investigating Officer concerned and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of the Sessions Court concerned;

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

[g] appear before the Investigating Officer concerned, as and when required for investigation purpose and attend the Court concerned regularly.

8 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.

9 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.

10 The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent.

Direct service is permitted.