

**(2010) 09 GUJ CK 0045**  
**In the Gujarat High Court**

**Case No :** Criminal Miscellaneous Application No. 9119 of 2010

Ganga Maldebhai Odedara

APPELLANT

Vs

State of Gujarat

RESPONDENT

**Date of Decision :** 13-09-2010

**Acts Referred:**

Arms Act, 1959 — Section 25(1)  
Criminal Procedure Code, 1973 (CrPC) — Section 439  
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

**Citation :** (2010) 09 GUJ CK 0045

**Hon'ble Judges :** Rajesh H Shukla, J

**Bench :** Single Bench

**Advocate :** Thakkar Assoc, for the Appellant; M.R. Mengdey, APP and Mr. K.D. Vasavada, for the Respondent

## **Judgement**

Honourable Mr. Justice Rajesh H. Shukla

1. Present application has been filed by the applicant for grant of regular bail u/s 439 of Cr.P.C. after the charge-sheet is filed.

2. The applicant accused is charged with having committed offences under Sections 302, 307, 147, 148, 149, 323, 324, 325, 504 and 506(2) of Indian Penal Code and Section 25(1)(a) of the Arms Act and Section 135 of the B.P. Act for which F.I.R. being CR No.I-4/2007 has been registered with Kirti Mandir Police Station, Porbandar.

3. Learned Senior Counsel Mr. Thakkar appearing for the applicant referred to the papers and the role attributed and submitted that the applicant is the original accused No.5 who is alleged to be attributed with fire arm. However, he submitted that no injury has been caused to the deceased with the fire arm which is evident from the P.M. report. He has also referred to the medical certificate of both the hospitals at Porbandar and Jamnagar and submitted that the applicant is not attributed with any kind of injury except to one witness and therefore present application may be allowed considering the fact that the

charge-sheet is now filed. He further submitted that the District Court has referred to the aspect of proceeding u/s 70 as well as the antecedent of the applicant. He submitted that in most of the cases the applicant has been acquitted including the offence u/s 302. He has also submitted that the complainant is also having antecedent for which he referred to the list of cases registered against the complainant. He, therefore, submitted that the present application may be allowed subject to any conditions.

4. Learned A.P.P. Mr. M.R. Mengdey referred to the police papers and strenuously submitted that the incident is stated to have been occurred in January-2007 and the present applicant accused was arrested only in September-2009. He further submitted that there are other cases pending against the applicant and therefore the present application may not be allowed. He also submitted referring to the statement that there was indiscriminate firing, though nobody injured. But, considering the antecedent and conduct, the present application may not be allowed.

4.1. Learned Counsel Mr. Vasavda referred to the order passed by the Sessions Court and emphasized on the aspect that applicant was absconding. He has also submitted that it is not a simple case of involvement in one offence but there are number of offences registered and they are working as a separate Gang and therefore public interest may also be considered. He, therefore, submitted that present application may not be allowed.

5. Having regard to the rival submissions, it is required to be considered whether the present application can be entertained or not.

5.1. At this stage, the Court is not required to appreciate or scrutinize the evidence in detail. However, for considering the prima facie case, the relevant aspects like, the nature of offence/gravity, manner in which the offence is alleged to have been committed, role attributed and weapon used are required to be considered.

5.2. In the facts of the present case, as referred, no injury has been caused with the fire arm as it is evident from the P.M. report. Therefore, without any further elaboration, having noted the objections with regard to the conduct and the antecedent and also considering the role attributed and the fact that now the charge-sheet is filed, the present application deserves to be allowed subject to the conditions hereinafter.

6. Accordingly, present application stands allowed. The applicant is ordered to be released on regular bail in connection with the F.I.R. being CR No.I-4/2007 registered with Kirti Mandir Police Station, Porbandar, on his executing a bond of Rs.5,000/- (Rupees Five Thousand) with one solvent surety of the like amount to the satisfaction of the lower Court and subject to the conditions that he shall:

(a) not take undue advantage of his liberty or abuse his liberty.

(b) not to try to tamper or pressurize the prosecution witnesses or complainant

in any manner.

(c) not act in any manner injurious to the interest of the prosecution.

(d) maintain law and order and should cooperate with the investigating officers.

(e) mark his presence before concerned Police Station on 1st Monday of every month of English calendar between 11:00 AM to 2:00 PM till the trial commences;

(f) furnish the address of his residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change his residence without prior permission of the Court.

(g) surrender his passport, if any, to the lower Court, within a week.

(h) not enter the Taluka Porbandar for a period of six months.

7. If breach of any of the above conditions is committed, the concerned Sessions Judge will be free to issue warrant or take appropriate action in the matter.

8. Bail before the lower Court having jurisdiction to try the case. It would be open to the trial Court concerned to give time to furnish the solvency certificate if prayed for.

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