

(2023) 08 GUJ CK 0032

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 5613 Of 2023

Girishbhai Babubhai Gari

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-08-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 143, 147, 148, 149, 307, 323, 324, 325, 452, 504, 506(2)

Citation : (2023) 08 GUJ CK 0032

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Rajkumar Chaumal, Asmita Patel

Judgement

Ilesh J. Vora, J

1. Rule returnable forthwith. Ms. Asmita Patel, learned Additional Public Prosecutor waives service of notice of rule for and on behalf of the respondent-State.

2. Heard learned counsel Mr.Rajkumar Chaumal, learned counsel for the applicant and Ms. Asmita Patel, learned Additional Public Prosecutor for the respective parties.

3. By way of the present successive bail application under section 439 of the Code of Criminal Procedure, applicant (original accused No.2)- Girishbhai Babubhai Gari seeks regular bail in connection with FIR No.11821030210549 for the offences punishable under sections 307, 325, 324, 452, 323, 504, 506(2), 143, 147, 148, 149 of the Indian Penal Code. As per the prosecution's case, accused No.2 and co-accused formed an unlawful assembly with a common object to kill deceased Govindbhai and to execute the common object, they assembled arms with deadly weapons at the place of the offence and assaulted the deceased with iron pipe, stick and other deadly weapons, as a result of

which, the deceased sustained vital injuries and succumbed to the injuries on 09.09.2021. The applicant and co-accused were arrested. After completion of the investigation, the chargesheet came to be filed for the offence as referred above. So far as role of the applicant is concerned, it is alleged that he being a member of the unlawful assembly, armed with the iron pipes, had assaulted the deceased, as he inflicted pipe blow on the hands and on the back side of the body of the deceased.

4. After rejection of the bail application by the Court, the petitioner preferred the petition for bail before this Court and the same was withdrawn on 05.07.2022. After the withdrawal, the co-accused, namely, Jayesh Shankerbhai Gari, Rajnibhai Mansukhbhai Gari, Vipulbhai Kanabhai Gari and Kantibhai Ramabhai Gari have been granted bail by this Court. In such circumstances, claiming principle of parity with the co-accused, this successive bail application has been preferred by the applicant.

5. Mr. Chaumal, learned counsel for the applicant, submitted that the person, who had inflicted serious injuries, have been considered and have granted bail by this Court and, therefore, the applicant may be also given the same benefit by imposing appropriate conditions, that may be deemed fit by the Court. He further submitted that the applicant is having no any past record and as he is in custody since 05.09.2021 and as trial would take considerable time, therefore, this is a fit case to exercise judicial discretion.

6. Opposing the contention, learned Additional Public Prosecutor Ms. Asmita Patel has submitted that prima facie the case is made out against the applicant accused and considering the gravity of the offence, the Court may not exercise discretion in favour of the applicant. She further submitted that after the incident, the wife of the present applicant threatened the witnesses for which the offence under section 506(2) of the Indian Penal Code is being registered against her, which is evident of the fact that the applicant is head strong person and, if he be released on bail, then he may tamper with the evidence.

7. Having considered the learned counsel for the respective parties, and on perusal of the material placed on record, it appears that the persons against whom, serious allegations are made, have been considered by this Court and they have been granted bail on 10.02.2022. In such circumstances, successive bail application after the change in fact situation, viz, granting bail to the co-accused is maintainable. So far as the claim of parity is concerned, the co-accused, as referred above, have been considered despite there being a serious allegation made against them. Thus, considering the role attributed to the present applicant herein, without much discussion on the merits of the case, on the ground of parity, this Court is releasing the applicant on bail by imposing stringent conditions.

8. Hence, the applicant is ordered to be released on regular bail in connection with the FIR No.11821030210549 for the offences punishable under sections

307, 325, 324, 452, 323, 504, 506(2), 143, 147, 148, 149 of the Indian Penal Code, on executing a personal bond of Rs.10,000/- (Rupees Ten thousands 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) shall not enter into Jhalod taluka for the period of 01 (one) year, except to attend Court proceedings;
- c) not act in a manner injuries to the interest of the prosecution;
- d) surrender passport, if any, to the lower court within a week;
- e) not leave India without prior permission of the Sessions Judge concerned;
- f) 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;

9. The authorities shall release the applicant if he is not required in connection with the any other offence. If breach of any above condition is committed, the Sessions Judge concerned shall take appropriate action or issue warrant against the applicant. The bail bond to be executed before the learned trial Court having jurisdiction to try the case. It will be open for the sessions judge concerned to delete, modify and/or relax any of the above conditions, in accordance with law. Nothing stated hereinabove, shall tantamount to the expression of any opinion on the merits of this case. Rule is made absolute to the aforesaid extent. Direct service permitted.