

(2022) 09 GUJ CK 0055

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 2274 Of 2022

Gopal @ Goka Dharmabhai (Koli)

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-09-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 143, 147, 148, 149, 302, 323
Gujarat Police Act, 1951 — Section 135

Citation : (2022) 09 GUJ CK 0055

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Darshan M Varandani, Manan Mehta

Final Decision : Partly Allowed

Judgement

Ilesh J. Vora, J

1. Heard Mr. Darshan Varandani, learned advocate for the applicants and Mr. Manan Mehta, learned APP for the respondent State.

2. Learned advocate for the applicants, on instructions, does not press this application qua applicant no. 1 – Gopal @ Goka Dharmabhai (Koli). Hence, present application is dismissed qua applicant no. 1. Rule is discharged qua applicant no.1.

3. The applicants, by way of this application filed under Section 439 of the Code of Criminal Procedure, seek regular bail in connection with the FIR being C.R. No. 11993015200094 of 2020 registered with Balasar Police Station, Dist. Kachchha East, Gandhidham, for the offences punishable under Sections 302, 323, 147, 143, 148, 149 of IPC and Section 135 of GP Act.

4. Brief facts of the present case are that, as per prosecution case, deceased Dalsukhbhai fell in love with sister of applicants. The applicants and their brothers are against the said relationship. In this background facts, the

applicants and co-accused have formed unlawful assembly with an object to kill the deceased and they went to house of deceased and caused fatal injuries by Dharia, pipe etc. In all 5 accused have been arrested in the alleged offence. The present applicants are accused nos. 3 and 5. So far role of present applicant – Haresh Bhurabhai Koli (Pagi) is concerned, he caused injury on the stomach by inflicting iron pipe blow.

5. Mr. Darshan Varandani, learned advocate for the applicants submitted that co-accused Satishbhai who have graver role, has been granted bail by this Court. He further submitted that, the applicant has been falsely implicated in the alleged offence, as during postmortem, no injuries on stomach found by the Doctor. In such circumstances, he prays that the applicant is in custody since 2.4.2022 and still there is no substantial progress in the trial proceedings and therefore, discretion may kindly be exercised enlarging the applicant on bail.

6. Opposing the bail application, Mr. Manan Mehta for the respondent State contended that there is prima-facie evidence to believe that the applicants have committed the offence and therefore, considering the nature and gravity of evidence and severity of punishment in the even of conviction, no case is made out for the exercising the discretion in favour of the applicants.

7. Having heard the learned counsel for the respective parties and upon perusal of the material placed on record, it appears that the applicant is not the real brother and considering the role attributed to alleged offence and evidence in support of the charge, I inclined to release the applicant no.2 on bail. Hence, present application is partly allowed.

8. Hence, the applicant no.2 is ordered to be released on regular bail in connection with the FIR being C.R. No. 11993015200094 of 2020 registered with Balasar Police Station, Dist. Kachchha East, Gandhidham, 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:

No.

Conditions

(a)

not take undue advantage of liberty or misuse liberty;

(b)

not act in a manner injuries 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;

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 qua applicant no.2 to the aforesaid extent. Direct service permitted.