

(2020) 12 GUJ CK 0034
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 16413 Of 2020

Govindbhai Nanjibhai Solanki

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 15-12-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 306, 498A
Dowry Prohibition Act, 196 — Section 3, 4

Citation : (2020) 12 GUJ CK 0034

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Pratik Y Jasani, LB Dabhi

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This application is filed by the applicants under Section 439 of the Code of Criminal Procedure for enlarging the applicants on Regular Bail in

connection with C. R. No. 11208003201481 of 2020, registered with Gandhigram-2 (University) Police Station, Rajkot City, District: Rajkot for the

offences punishable under sections 306, 498A, and 114 of the Indian Penal Code, 1860 (IPC) and sections 3 and 4 of the Dowry Prohibition Act.

2. Heard learned advocate Mr. Pratik Y. Jasani for the applicants and learned APP Mr. L. B. Dabhi for the respondent - State through Video

Conference.

Submissions of the Parties:

3. Learned advocate for the applicants - accused has submitted that the applicants - accused are innocent persons and falsely implicated in the

offence in question. It is submitted that the applicants are the father and mother in-law of the deceased, respectively aged 63 and 60 years, except

that, there is no active involvement of the applicants. Besides, the allegations against the present applicants are general in nature. Further, the

deceased had committed suicide at her parental home only. Further, the matrimonial tenure of deceased was of 09 years. It is submitted that the

investigation is almost over and hence, further custodial interrogation may not be required. Moreover, the applicants have family roots in the society

and therefore, the applicants are not likely to flee away from justice. That the applicants will abide by whatever conditions imposed by the Court. The

learned advocate for the applicants has further vehemently submitted that there is no direct involvement of the applicants - accused in the present

case so far as allegation is concerned. It is, therefore, prayed that discretion may kindly be exercised and grant bail to the applicants - accused.

4. Per contra, learned APP has vehemently argued that charge sheet in the matter is yet to be filed and hence, there are all chances of hampering and

tampering with the evidence. Therefore, it is urged that discretion may not be exercised and ultimately, the learned APP has opposed the grant of bail

looking to the nature and gravity of offence, involvement of the applicants - accused. The learned APP has further submitted that if the Court is

inclined to grant bail then, in such case, strict conditions may be imposed to secure the presence of the applicants - accused.

Merits of the Case:

5. This court has considered the following aspects:

(a) the investigation is stated to be almost over and in that case, further interrogation may not be required;

(b) the applicants are senior citizens, aged 63 and 60 years respectively;

(c) the allegations against the applicants, prima facie, appear to be general in nature;

(d) further as per the catena of decisions of Honâ??ble Apex Court, there are mainly three factors which are required to be considered by this Court

i.e. prima facie case, availability of applicant - accused at the time of trial and tampering and hampering with the witnesses by the accused;

(e) that the learned advocate for the applicants has submitted that the applicants - accused are not likely to flee away;

(f) that the applicant - accused is in custody since 28.09.2020;

(g) the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. C.B.I. Reported in (2012) 1 SCC 4,0 wherein it is held that bail is a

rule and jail is an exception and there should not be pre-trial punishment.

6. Having heard the learned advocates for the parties and perusing the record produced in this case as well as taking into consideration the facts of

the case, nature of allegations, gravity of accusation, availability of the applicants - accused at the time of trial etc. and the role attributed to the

present applicants - accused, the present application deserves to be allowed and accordingly stands allowed. The applicants - accused are ordered to

be released on regular bail in connection with above-referred FIR, on executing personal bond of Rs.10,000/- each with one surety each of the like

amount to the satisfaction of the trial Court, subject to the following conditions that the applicants shall:

(a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from

disclosing such facts to the Court or any Police Officer or tamper with the evidence;

(b) maintain law and order and not to indulge in any criminal activities;

(c) furnish the documentary proof of complete, correct and present address of residence to the Investigating Officer and to the trial Court at the time

of executing the bond and shall not change residence without prior permission of the trial Court;

(d) provide contact numbers as well as the contact numbers of the sureties before the trial Court. In case of change in such numbers inform in writing

immediately to the trial Court;

(e) file an affidavit stating immovable properties whether self acquired or ancestral with description, location and present value of such properties

before the trial Court, if any;

(f) not leave India without prior permission of the trial Court;

(g) surrender passport, if any, before the trial Court within a week. If do not possess passport, then shall file affidavit to that effect;

(h) the applicant No. 1 shall mark presence before the concerned police station on every 1st day of the English Calendar month between 11:00 a.m.

and 2:00 p.m. for a period of one year;

(i) shall maintain all the rules and regulations framed by the Municipality regarding contemporary status of corona virus/Covid-19, State Government or by any competent authority, including social distancing.

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

6.2 If breach of any of the above conditions is committed, the trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities shall release the applicants forthwith only if the applicants are not required in connection with any other offence for the time being.

7. Rule is made absolute accordingly. Direct service is permitted through fax / e-mail / any other electronic mode.

7.1 The Registry shall communicate this order by fax / e-mail to the concerned Court / authority.