

(2019) 11 GUJ CK 0025
In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 19687 Of 2019

Hitesh @ Vango Narshibhai Bambhaniya	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 28-11-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 120B, 302, 323, 325, 367, 504, 506(2)
Gujarat Police Act, 1951 — Section 135(1)

Citation : (2019) 11 GUJ CK 0025

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : Premal S Rachh, L.B.Dabhi

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. This application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 for regular bail in connection with FIR registered as C.R. No.I-40 of 2019 with Panch 'A' Division Police Station, Jamnagar for the offence punishable under Sections 325, 323, 367, 504, 506(2) and 120(B) of the Indian Penal Code and under Section 135(1) of the Gujarat Police Act.
2. Learned advocate appearing on behalf of the applicant submits that considering the nature of offence, the applicant may be enlarged on regular bail by imposing suitable conditions.
3. On the other hand, the learned Additional Public Prosecutor appearing for the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.
4. Learned advocate Mr. Nandish Thackar is permitted to file his appearance on behalf of original complainant. He R/CR.MA/19687/2019 ORDER tender affidavit in support of the petition which is taken on record.

5. Learned Advocates appearing on behalf of the respective parties do not press for a further reasoned order.

6. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers. Following aspects are considered :-

I) The First Information Report is registered on 18.05.2019 for the offence which is alleged to have taken place on 18.05.2019.

II) The applicant is in custody since 31.05.2019.

III) The investigation is concluded and charge-sheet is filled.

IV) In the affidavit tendered by learned advocate for the complainant, it is stated that the dispute between the parties is settled and the complainant has no objection to grant of regular bail.

V) Insofar as the antecedents are concerned, learned APP strongly opposes as the present offence is committed while the applicant who is an under-trial for offence under Section 302 of IPC was on parole. Against which, learned advocate for the applicant submitted that if the incident as narrated in the FIR is considered, no identity of the applicant established to have committed the offence. No Test Identification Parade is conducted.

VI) Learned Additional Public Prosecutor under the instructions of the Investigating Officer is unable to bring on record any special circumstances against the applicant.

This Court has taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. Central Bureau of Investigation reported in [2012] 1 SCC 40.

7. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the First Information Report, without discussing the evidence in detail, prima facie, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

8. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with C.R. No.I-40 of 2019 with Panch 'A' Division Police Station, Jamnagar on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall;

(a) not take undue advantage of liberty or misuse liberty;

(b) not act in a manner injurious to the interest of the prosecution & shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;

(c) surrender passport, if any, to the Trial Court within a week;

(d) not leave the State of Gujarat without prior permission of the Trial Court concerned;

(e) mark presence before the concerned Police Station once in a month for a period of six months between 11.00 a.m. and 2.00 p.m.;

(f) furnish the present 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 the residence without prior permission of Trial Court;

9. The authorities will release the applicant only if he 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.

10. Bail bond to be executed before the 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.

11. At the trial, the 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.

12. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent. Direct Service is permitted.