

(2021) 03 GUJ CK 0065

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 19690 Of 2020

Kalpeshbhai Bhikhubhai Solanki

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 15-03-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 120(B), 143, 147, 148, 149, 302, 324

Gujarat Police Act, 1951 — Section 135(1)

Citation : (2021) 03 GUJ CK 0065

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

Bench : Single Bench

Advocate : Ashish M Dagli, Vicky B Mehta, H.K. Patel

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. This application is filed by the applicants under Section 439 of the Code of Criminal Procedure, 1973 for regular bail in connection with FIR registered as C.R. No.I-11208002200050 of 2020 with AAJI DAM POLICE STATION, DISTRICT-RAJKOT, for the offence punishable under Sections 302, 324, 143, 147, 148, 149, 120(B) of the Indian Penal Code and under Section 135(1) of G.P. Act.

2. Learned advocate appearing on behalf of the applicants submits that considering the nature of offence, the applicants 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 Advocates appearing on behalf of the respective parties do not press for a further reasoned order.

5. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers.

Following aspects are considered :-

I) The F.I.R. is registered on 29-01-2020 for the offence which is alleged to have taken place on 29-01-2020.

II) The applicants are in custody since 30-01-2020;

III) Investigation is concluded and charge-sheet is filed;

IV) Learned Advocate for the applicants submitted that the applicants have been named in the FIR only because of the co-accused persons who were litigating against the complainant side in connection with the agricultural land.

V) Learned Advocate for the applicants submitted that though the applicants have attributed with the Kodari (Agricultural equipment), but there is no reference of it being used for assault.

VI) Learned Advocate for the applicants submitted that Co-accused identically situated has been enlarged on regular bail. Hence, applying principle of parity.

VII) Learned Advocate for the applicant under the instruction submitted that there are no other antecedents against the applicants;

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

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.

6. In the facts and circumstances of the case and considering the nature of the allegations made against the applicants 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 applicants on regular bail.

7. Hence, the present application is allowed. The applicants are ordered to be released on regular bail in connection with C.R. No.I-11208002200050 of 2020 with AAJI DAM POLICE STATION, DISTRICT- RAJKOT on executing a personal bond of Rs.10,000/= (Rupees Ten Thousand Only) EACH with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that they 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) not to enter Village-Thebchada for the period of six months except for marking presence and attending the trial;
 - (f) 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.;
 - (g) 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;
8. The authorities will release the applicants only if they are 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.
9. 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.
10. 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 applicants on bail.
11. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent. Direct Service is permitted.