

(2023) 05 GUJ CK 0033

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 7635 Of 2023

Kalubha Chamansinh Zala

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 114, 307, 323, 324, 325, 326, 504

Gujarat Police Act, 1951 — Section 135

Citation : (2023) 05 GUJ CK 0033

Hon'ble Judges : M. R. Mengdey, J

Bench : Single Bench

Advocate : Sajid Y Kariyaniya, Punit R Dave, Satyajit S Sonagara, Utkarsh Sharma

Final Decision : Allowed

Judgement

M. R. Mengdey, J

1. Leave to amend.

2. This Application is filed by the Applicants – Accused under Section 439 of the Code of Criminal Procedure for enlarging the applicant on Regular Bail in connection with I-C.R. No.11211024230040/2023 registered with Zinzuvada Police Station, District Surendranagar for the offences punishable under Sections 307, 323, 324, 325, 326, 504 and 114 of the Indian Penal Code and Section 135 of the Gujarat Police Act.

3. Heard learned Advocate Mr.Sajid Y. Kariyaniya for the applicants, learned advocate Mr. Satyajit S. Sonagara for the original complainant and learned APP Mr. Utkarsha Sharma for the respondent-State.

Submission of the Parties:

4. Learned Advocate for the Applicants / Accused has submitted that there is no

specific role attributed to the present Applicants in the offence in question. Moreover, victim in the incident has already been discharged from the hospital and his condition is good. He has further submitted that Applicants have family roots in the society and therefore, they are not likely to flee away from justice. That they will abide by whatever conditions imposed by the Hon'ble Court. He has therefore prayed that discretion may kindly be exercised and grant bail to the Applicants.

5. Per contra, learned APP has vehemently argued that present applicants have inflicted injuries to the victim with deadly weapons and therefore discretion may not be exercised and ultimately he has opposed grant of bail looking to the nature and gravity of offence, involvement of the Applicants.

6. Learned Advocate for the original complainant has submitted inter alia that the Applicants have assaulted the victim and have inflicted the injuries on the vital part of the body and therefore discretion may not be exercised and requested to reject the application.

Merits of the Case:

7. This court has considered the following aspects:

(a) That victim is already discharged from the hospital.

(b) Further as per catena of decisions of Hon'ble Supreme Court, there are mainly 3 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.

(c) That the Applicant Accused is in custody since 05.04.2023.

(d) 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 40, wherein it is held that bail is a rule and jail is an exception.

8. 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 Applicant Accused at the time of Trial etc. and the role attributed to the present Applicants, the present Application deserves to be allowed and accordingly stands allowed. The Applicants are ordered to be released on regular bail in connection with C.R. No.11211024230040/2023 registered with Zinzuvada Police Station, District Surendranagar on executing a personal bond of Rs.10,000/- each with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that they 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 his residence to the Investigating Officer and to the Trial Court at the time of executing the bond and shall not change his residence without prior permission of the trial Court.
 - (d) provide their 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 his 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) mark presence before the concerned police station on every 1st day of English calendar month between 12:00 Noon and 2:00 PM till one year or till the trial is concluded, whichever is earlier.
 - (h) surrender passport, if any, to the Trial Court within a week. If he does not possess passport, he shall file an Affidavit to that effect.
 - (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.
9. 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.
10. 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 will release the Applicants forthwith only if he is not required in connection with any other offence for the time being.
11. At the trial, the concerned trial Court shall not be influenced by the prima facie observations made by this Court in the present order.
12. Rule is made absolute. Direct service is permitted.