

(2023) 07 GUJ CK 0035

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 10299 Of 2023

Kamsibhai Oganbhai Bharvad

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-07-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 143, 147, 148, 149, 307, 324, 323, 427, 504,
506(2)
Gujarat Police Act, 1951 — Section 135

Citation : (2023) 07 GUJ CK 0035

Hon'ble Judges : Nirzar S. Desai, J

Bench : Single Bench

Advocate : Nauman S Qureshi, Rahul K Dave, Manan Maheta

Final Decision : Allowed

Judgement

Nirzar S. Desai, J

1. Learned advocate Mr. Nauman S. Qureshi appearing for the applicants does not press this application qua applicants No.6 and 8 and states that they may be permitted to file a fresh application for bail before the Sessions Court once charge-sheet is filed and hence, this application is considered only for remaining applicants i.e. applicants No.1 to 5, 7 and 9.

2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being C.R.No.11204025230247 of 2023 dated 15.5.2023 registered with Kheda Town Police Station, District: Kheda for offences punishable under Section 143, 147, 148, 149, 307, 324, 323, 427, 504, 506(2) of Indian Penal Code and Section 135 of the Gujarat Police Act.

3. Learned advocate appearing on behalf of the applicants submits that considering the nature of the offence, the applicants may be enlarged on regular

bail by imposing suitable conditions.

4. Learned Additional Public Prosecutor appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.

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

6. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicants on regular bail.

7. This Court has considered following aspects:-

(i) applicants are in jail since 16.5.2023;

(ii) though charge-sheet is not filed, investigation is substantially over;

(iii) Learned advocate Mr. Nauman S. Qureshi appearing for the applicants does not press this application qua applicants No.6 and 8 and states that they may be permitted to file a fresh application for bail before the Sessions Court once charge-sheet is filed and hence, this application is considered only for remaining applicants i.e. applicants No.1 to 5, 7 and 9;

(vi) As far as applicants No.1,2,3,4,7 and 9 are concerned, even as per the FIR the allegation against them is that they have caused damaged to the Eccosport car of the complainant;

(v) as far as applicant No.5 Budhabhai Raghubhai Bharwad is concerned, the allegation against them was that though he has used stick on which part he has caused injury is not stated in the FIR. However, learned advocate Mr.Qureshi states that even otherwise also the dispute is settled between the parties and the aforesaid facts are not disputed by learned advocate Mr.Rahul Dave appearing for the original complainant. Hence, in view of that as well applicant No.5 is required to be enlarged on bail;

(vi) there is no past antecedent in respect of any of the accused persons who are released on bail by this order as per the say of learned advocate Mr. Sakeel Qureshi appearing for the applicants.

In the facts and circumstances of the present case, I am inclined to consider the case of the present applicants.

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

9. Hence, the present application is allowed. The applicants are ordered to be

released on regular bail in connection with FIR being C.R.No.11204025230247 of 2023 dated 15.5.2023 registered with Kheda Town Police Station, District: Kheda 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;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave the India without prior permission of the concerned trial court;

[e] mark presence before the concerned Police Station between 1st to 10th day of every English calendar month for a period of six months between 11:00 a.m. and 2:00 p.m.;

[f] furnish the present 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 concerned trial court;

The authorities shall adhere to its own Circular relating to COVID-19 and, thereafter, 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. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Sessions 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 prima facie observations made by this Court in the present order.

11. Rule is made absolute to the aforesaid extent. Direct service is permitted.