

(2021) 04 GUJ CK 0053

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 6600 Of 2021

Kesrisinh Dhirubhai Jadav

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 20-04-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 143, 147, 148, 149, 302, 323, 325, 504

Citation : (2021) 04 GUJ CK 0053

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : Dhaval N Vakil, JK Shah

Final Decision : Dismissed

Judgement

Ashutosh J. Shastri, J

1. When the matter is taken up for hearing, learned advocate for the applicant has requested to grant draft amendment dated 25.03.2021 to correct certain typographical error inadvertently have been committed. Hence, the same is granted and allowed to be carried out forthwith.

1. This application is filed by the applicants-original accused nos.1 and 2 under Section 439 of the Criminal Procedure Code for seeking regular bail in connection with the FIR being CR.No.I- 11204033200004 of 2020 registered with Limbasi Police Station District: Kheda for the offence punishable under Sections 302, 143, 147, 148, 149, 323, 325 and 504 of the Indian Penal Code.

2. The present application is placed before this Court by virtue of an order dated 15.04.2021 passed by the learned Co-ordinate Bench of this Court and the registry accordingly has listed the matter before this Court.

3. Learned advocate Mr.Dhaval Vakil appearing on behalf of the applicants has submitted that the applicants are innocent persons and wrongly been arraigned

in prosecution. It has been submitted that the complaints have been filed against almost 14 persons and though there are no specific allegations against the applicants since the applicants have been allowed to languish in jail for a pretty long period and as such the request is made to grant regular bail. It has been submitted that on account of this Pandemic of COVID -19 situation, the trial is not proceedings ahead and as such the applicants are deprived of their liberty hence, requested to grant this application. No other submissions are being made.

4. As against this, learned APP Mr.J.K.Shah appearing on behalf of the State has submitted that with this almost third successive bail applications and on previous occasion extensive hearing had taken place and by the reasoned order the request for bail was refused, simply because on account of the extra ordinary circumstance if the trial is not commencing the same would not permit the applicants to rush down to the Court for seeking regular bail which has been already refused on previous occasion and it has been submitted that earlier order which has been passed on 06.10.2020 has not carried further and has attained finality and therefore the only the course open for the applicants is to seek a request for expeditious disposal of the trial of the case, hence requested to dismiss the application.

5. Having heard learned advocates appearing for the respective parties and having gone through the material placed on record, the Court had found that this is a successive bail application, on previous occasion even after the charge-sheet having been submitted again the bail application was presented which came to be rejected by a detailed order dated 06.10.2020 and the said order has attained finality. Even in the said order, the Court had already examined the case on merits prima-facie found the involvement of the present applicants. Hence, this Court is of the opinion that there is no extraordinary circumstance pointed out before this Court to grant regular bail at this stage of the proceedings, simply because on account of the extraordinary circumstance of Pandemic of COVID -19 situation prevailing across the Country if the trial is not commenced the same would not give a leverage to the applicants to rush down to this Court twice having been refused by the Court on previous occasion hence, the Court sees no reason to entertain this application.

6. Apart from that, by a detailed order the role of the applicants have been examined by this Court in an order as referred to above and few of the observations contained in paragraph nos 5, 6, 7 and 8 are relevant to the issue, hence, the Court deems it proper to reproduce the same as under:

"5. Having heard the learned advocates appearing the respective parties and having gone through the papers which are placed before the Court, a fact is also visible from the record that on 15.4.2020 before the stage of charge- sheet, an attempt was made to get the regular bail and after filing of the charge-sheet, these very applicants also made an attempt on 14.5.2020 to get the regular bail but, the same was not pressed. Now, apart from this, even the papers which are placed before the Court indicates that there is a specific role attributed against

the present applicants and it also appears that these applicants - original accused Nos.1 and 2 both have given the blow on the head of the deceased i.e. Ramtubhai Desaibhai Solanki. It also appears from the affidavit which has been filed by the Investigating Officer that there are repeated blows appear to have been given by the present applicants. In addition to this, there is a clear apprehension voiced out by the Investigating Officer in his affidavit that present applicants are residing in a very nearby vicinity and if they are allowed to be released on bail, there is a serious likelihood of repetition of crime, since there is a stiff difference between two communities going on in the village.

6. In addition to this, the record further indicates that in Column No.17 of PM Note which has been placed on record which is also a part of charge-sheet, has reflected injuries on the head over front scalp and if the cause of death is to be seen, there is a clear mention that it is due to cardio respiratory arrest due to brain hematoma following head injury which is clearly visible from page-43 of application compilation and these injuries are attributed specifically to the present applicants.

7. When this be the situation and when in a case of serious crime, a clear role is established prima facie during the course of investigation, this Court is of the opinion that applicants do not deserve to be enlarged on regular bail. Hence, the present application found to be meritless, deserves to be dismissed.

8. However, while parting with the order, a liberty is granted to the applicants to make a request before the trial court concerned for expeditious disposal of the trial."

7. In view of the aforesaid circumstances which are prevailing on record, it is not possible for this Court to accept the submissions of learned advocate for the applicants that the applicants are absolutely innocent persons and wrongly been arraigned in the prosecution. Hence, the present application being devoid of merits hereby stand dismissed.