

(2020) 08 GUJ CK 0035

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9934 Of 2020

Lalabhai Naranbhai Bharwad & 1 Other(s)

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 143, 147, 148, 149, 294(b), 307, 324

Gujarat Police Act, 1951 — Section 135(1)

Citation : (2020) 08 GUJ CK 0035

Hon'ble Judges : Dr A. P. Thaker, J

Bench : Single Bench

Advocate : Yogesh Lakhani, Kishan Prajapati, Jigar D Dave, Maithili Mehta

Final Decision : Allowed

Judgement

Dr. A. P. Thaker, J

[1] Heard Mr. Yogesh Lakhani, learned Senior Counsel for Mr. Kishan Prajapati, learned advocate for the applicants, Mr. Jigar Dave, learned

advocate for the original complainant and Ms. Maithili Mehta, learned APP for the respondent State through Video-conferencing.

[2] The present application is filed under Section 439 of the Code of Criminal Procedure in connection with an FIR No. 11191024200707 registered

with Ramol Police Station, Ahmedabad City for the offences punishable under Sections 324, 294(b), 143, 147, 148 and 149 of the Indian Penal Code

and Section 135(1) of the Gujarat Police Act and subsequently Section 307 of the Indian Penal Code, which came to be added by the Investigating

Officer.

[3] Mr. Yogesh Lakhani, learned Senior advocate appearing for the applicants

submits that the role attributed to the present applicants are same as found attributed to Vijaybhai Gafurbhai Bharwad. He has further submitted that the injured witnesses have already been discharged and nobody is in hospital for any treatment at present and other accused are already enlarged on bail. He has further submitted that the case of Mr. Mehulbhai Vinubhai Bharwad is also similar to that of Vijaybhai Gafurbhai Bharwad, who is enlarged on bail vide order dated 27.7.2020 by co-ordinate bench of this Court in CR.MA No. 9979 of 2020.

[3.1] Mr. Yogesh Lakhani, learned Senior advocate for the applicants has further submitted that so far as the Applicant Lalabhai Naranbhai Bharward is concerned, he is aged 52 years and there is no criminal antecedents against him and there is no allegation of overt act against him. He has further submitted that as per the contents of the FIR, somebody had inflicted blows on Mr. Atulbhai and by the statement of the applicant Lalabhai, the prosecution is trying to attribute the role of Mr. Lalabhai and has submitted that at the relevant time, applicant Mr. Lalabhai was present at home and the same was recorded in CCTV and the recording is provided to the Police. Learned Senior Advocate has further submitted that considering the cross- compliant being filed and the factum narrated in the FIR, the incident has happened on the spur of moment. Learned Senior Advocate has submitted that similarly situated persons are enlarged on bail and, therefore, on the ground of parity, the application may be allowed. He has further submitted that the applicants- accused will abide by all the conditions which are imposed by this Court. He has further submitted that considering the over all facts and circumstances, the application of Mr. Lalabhai Naranbhai Bharwad be allowed with restriction from entering into the are for certain period of time.

[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. She has submitted that there is active role played by the accused and they have collectively made assault on the victim who had got head injury and, therefore this application may be rejected.

[5] Mr. Jigar Dave, learned advocate for the original complainant has submitted that so far as the applicant Mr. Mehulbhai Vinubhai Bharwad is concerned, this Court may consider his application in view of the fact that

coordinate bench has passed order of releasing Mr. Vijaybhai Gafurbhai

Bharwad in CRMA No. 9979 of 2020. however, he has opposed the grant of bail to applicant Mr. Lalabhai Naranbhai Bharwad, as he has given blow

on the head of Mr. Atulbhai who has got 15 stitches and who had to remain hospitalised for the same. He has submitted that considering the role

attributed to Mr. Lalabhai, he may not be enlarged on bail, as the learned advocate Mr. Dave is apprehensive that if he is released on bail, he will

commit such offence wherein the complainant may be threatened by him.

[6] Having heard the learned advocates for the parties and perused the materials placed on record and the role attributed to applicant no.2 is

concerned i.e. Mr. Mehulbhai Vinubhai Bharwad is concerned, he is similarly situated as to Mr. Vijaybhai Gafurbhai Bharwad, who has been

released on bail by the coordinate bench taking into consideration the facts of the case, without discussing the evidence in detail, at this stage, this

Court is inclined to grant regular bail to both the applicants.

[7] This Court has considered following aspects;

(i) That the FIR does not attribute the applicants of any overtact;

(ii) that the victims are already discharged;

(iii) that the factum of cross-complaint filed;

(iv) the age of the applicant no.1 being 52 years old;

[8] This Court has also taken into consideration the law laid down by the Apex Court in the case of Sanjay Chandra Vs. Central Bureau of

Investigation, (2012) 1 SCC 40;

[9] In the result, the present application is allowed and the applicants are ordered to be released on regular bail in connection with an FIR No.

11191024200707 registered with Ramol Police Station, Ahmedabad City, on executing a personal bond of Rs.10,000/- (Rupees Ten Thousands Only)

each with one local surety of the like amount to the satisfaction of the learned 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;

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

[d] not leave the State of Gujarat without prior permission of the concerned Trial Court;

[e] the applicant no.1 is restricted to enter into the vicinity atleast for a period of four months, considering the apprehension raised by the learned

advocate for the complainant;

[f] mark presence before the concerned Police Station on alternate every Monday for initial six months and thereafter, on alternate Monday of every

English calendar month, for a period of six months, between 10:00 a.m. and 2:00 p.m.;

[g] furnish latest 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 Trial Court;

[10] 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 concerned Trial Court will be free to issue warrant or take appropriate action in the matter. Bail bonds to be

executed before the Trial 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. At the trial, learned 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. Rule is made absolute accordingly.

[11] Registry is directed to intimate about this order to the concerned authorities through fax, email and/or any other suitable electronic mode. Learned

advocate for the applicants are also permitted to intimate about this order to the concerned authorities through fax, email and/or any other suitable

electronic mode.