

(2024) 01 GUJ CK 0024

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 21535 Of 2023 (For Regular Bail - After Chargesheet)

Mukesh @ Chamdo Shivajibhai Kanle

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-01-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 143, 144, 147, 148, 201, 302, 323
Gujarat Police Act, 1951 — Section 135

Citation : (2024) 01 GUJ CK 0024

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : BC Dave, Hardik Soni, Kishan Dahiya

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. Rule. Learned APP waives service of notice of rule for respondent – State of Gujarat.

2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the FIR being C.R. No.11210046230973/2023 registered with the Puna Police Station, Surat for the offence punishable under Sections 302, 323, 114, 143, 144, 147, 148, 148 and 201 of the Indian Penal Code and under Section 135 of the Gujarat Police Act.

3. Learned advocate for the applicant submitted that now the investigation is completed and after submission of the chargesheet, the present application is preferred and the applicant is in jail since 25.07.2023. Learned advocate submitted that it is alleged against the applicant that the applicant has given kick and fist blows to the deceased at the time of commission of offence, however, the co-accused, who is attributed graver role than the applicant, is already

enlarged on bail by the concerned trial court. Learned advocate submitted that there is no recovery or discovery at the instance of the present applicant. It is, therefore, urged that considering the nature of the offence and on the ground of parity, the applicant may be enlarged on regular bail by imposing suitable conditions.

4. Learned APP, Mr. Soni for the respondent-State as well as learned advocate, Mr. Dahiya for the original complainant have opposed grant of regular bail looking to the nature and gravity of the offence. It is submitted that the role of the present applicant is clearly spelt out from the papers of the chargesheet and, hence, the present application may not be entertained.

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

6. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers of the investigation and considered the allegations levelled against the applicant and the role played by the applicant. It is found out from the record that the present application is preferred after submission of the chargesheet and now the investigation is completed and the applicant is in jail since 25.07.2023. I have considered the role attributed to the present applicant and the co-accused, who is having graver role than the present applicant, has already been enlarged on bail and there is no recovery or discovery at the instance of the present applicant. Therefore considering the above factual aspects and on the ground of parity, the present application deserves to be allowed.

7. This Court has also 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 as well as in case of Satender Kumar Antil v. Central Bureau of Investigation & Anr. reported in (2022) 10 SCC 51.

8. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the FIR, 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 applicant on regular bail.

9. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.11210046230973/2023 registered with the Puna Police Station, Surat on executing a personal bond of Rs.15,000/- (Rupees Fifteen 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 State of Gujarat without prior permission of the Sessions Judge concerned;

[e] mark presence before the concerned Police Station on alternate Monday 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 this Court;

10. The authorities will release the applicant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the concerned 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 Court to delete, modify and/or relax any of the above conditions, in accordance with law.

11. 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 applicant on bail.

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