

(2021) 03 GUJ CK 0051
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 20009 Of 2020

Mukeshbhai Laxmibhai Jirva

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 09-03-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 114, 143, 147, 149, 302, 307, 323

Citation : (2021) 03 GUJ CK 0051

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : Zubin F Bharda, L B Dabhi

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. This application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 for regular bail in connection with FIR registered as CR-I/11200007200903 /2020 with Bhilad Police Station, Valsad for the offence punishable under Sections 302, 307, 323, 114, 143, 147 and 149 of the Indian Penal Code.

2. Learned advocate appearing on behalf of the applicant submits that considering the nature of offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

3. On the other hand, the learned Additional Public Prosecutor appearing for the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.

4. Learned Advocates appearing on behalf of the respective parties do not press for a further reasoned order.

5. I have heard the learned advocates appearing on behalf of the respective

parties and perused the papers. Following aspects are considered :-

I) The FIR is registered on 22.05.2020 for the offence which took place on 21.06.2020.

II) The applicant is in custody since 25.06.2020.

III) Investigation is concluded and charge- sheet is filed.

IV) Submission of learned advocate for the applicant that incident arose out of enmity with regards to cultivation of land, as the applicant and the deceased family were sharing common boundary in the forest cultivation land.

V) Submission of learned advocate for the applicant that even in the FIR, there is no allegation of use of any weapon. The only allegation is to give kick and flows and plucking the deceased by lifting in air and throwing him on the ground.

VI) No antecedents reported.

VII) Learned Additional Public Prosecutor under the instructions of the Investigating Officer is unable to bring on record any special circumstances against the applicant.

6. This Court has 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.

7. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the First Information Report, 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.

8. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with CR-I/11200007200903 /2020 with Bhilad Police Station, Valsad 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 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 his 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;

(g) not enter Tal:Umbergaon till the evidence of complainant and eye witnesses is recorded except for the purpose of marking presence before the concerned Police Station and attending the trial proceedings.

9. 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 Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter.

10. 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. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent. Direct Service is permitted.