

(2022) 04 GUJ CK 0028
In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 17349 Of 2021

Najubhai Revabhai Algotar (Bharwad)	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 07-04-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 143, 147, 148, 149, 201, 302, 323, 384, 504
Gujarat Police Act, 1951 — Section 135(1)

Citation : (2022) 04 GUJ CK 0028

Hon'ble Judges : Dr.Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Mita S Panchal, Bhakti M Joshi, Monali Bhatt

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This application is filed by the applicant – accused under Section 439 of the Code of Criminal Procedure for enlarging the applicant on Regular Bail in connection with I-C. R. No. 70 of 2019 registered with Sachin Police Station, District: Surat for the offences punishable under Sections 302, 323, 504, 384, 143, 147, 148, 149 and 201 of the Indian Penal Code, 1860 (herein after referred to as “the IPC”) and Section 135(1) of the Gujarat Police Act.

2. Heard learned advocate Ms. Mita Panchal for the applicant and learned APP Ms. Monali Bhatt for the respondent – State as also learned advocate Ms. Bhakti Joshi appearing for the original complainant.

Submissions of the Parties:

2.1 The learned advocate for the applicant - accused has submitted that the applicant - accused is an innocent person and falsely implicated in the offence in question. It is submitted that in the present case, the applicant is charged with the aforesaid offences, however, the ingredients of the said offences have not

been satisfied. It is submitted that the present applicant has nothing to do with the crime in question. It is further submitted by the learned advocate for the applicant that it is wrongly mentioned that the applicant was possessing the sword in his hand. Further, the deceased was also a headstrong person.

2.2 The learned advocate for the applicant, with all humility at her command, submitted that other co-accused have been either released by the learned Sessions Court or by this Court and accordingly, on the ground of parity also, the applicant is required to be enlarged on bail. Further, it is submitted that the applicant - accused has no antecedents.

2.3 The learned advocate for the applicant, inviting attention of the Court to an affidavit filed on behalf of the original complainant, who is the son of the deceased, submitted that even other wise, the matter has been amicably settled between the parties and the original complainant has no objection if the present applicant is released on bail.

2.4 The learned advocate for the applicant submitted that the investigation is over and charge sheet in the case is already filed and accordingly, there is no possibility of tampering and hampering with the evidence.

2.5 Besides, the applicant has family roots in the society and therefore, the applicant is not likely to flee away from justice. That the applicant will abide by whatever conditions imposed by the Court. The learned advocate for the applicant has further vehemently submitted that there is no direct involvement of the applicant - accused in the present case so far as allegation is concerned. It is, therefore, prayed that discretion may kindly be exercised and grant bail to the applicant - accused.

3. Per contra, learned APP has vehemently argued that from the charge sheet papers, prima facie case is made out against the present applicant. Further, it is submitted that the applicant is the prime accused in the crime in question and accordingly, parity does not apply in the case on hand. Therefore, it is urged that discretion may not be exercised and ultimately, the learned APP has opposed the grant of bail looking to the nature and gravity of offence, involvement of the applicant - accused.

4. Ms. Bhakti Joshi, learned advocate for the original complainant, however, while drawing attention to the affidavit filed by the original complainant, conceded the fact of compromise between the original complainant and the applicant and submitted that the original complainant has no objection if the applicant - accused is enlarged on bail.

Merits of the Case:

5. This court has considered the following aspects:

(a) the investigation is over and charge sheet is filed;

(b) the co-accused have been released on bail either by the learned Sessions

Court or by this Court;

(c) matter has been amicably settled between the parties and an affidavit to that effect is produced on record;

(d) applicant stated to have no antecedents;

(e) further as per the catena of decisions of Hon'ble Apex Court, there are mainly three factors which are required to be considered by this Court i.e. prima facie case, availability of applicant - accused at the time of trial and tampering and hampering with the witnesses by the accused;

(f) that the learned advocate for the applicant has submitted that the applicant - accused is not likely to flee away;

(g) that the applicant - accused is in custody since 19.07.2019;

(h) the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. C.B.I. Reported in (2012) 1 SCC 40, wherein it is held that bail is a rule and jail is an exception and there should not be pre-trial punishment.

6. Having heard the learned advocates for the parties and perusing the record produced in this case as well as taking into consideration the facts of the case, nature of allegations, gravity of accusation, availability of the applicant - accused at the time of trial etc. and the role attributed to the present applicant - accused and the fact that the co-accused have been released; the fact that the charge-sheet is filed and that the matter is settled between the parties, the present application deserves to be allowed and accordingly stands allowed. The applicant is ordered to be released on regular bail in connection with above-referred FIR, on executing a personal bond of Rs.50,000/-(Rupees Fifty Thousand only) with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that the applicant shall:

(a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer or tamper with the evidence;

(b) maintain law and order and not to indulge in any criminal activities;

(c) furnish the documentary proof of complete, correct and present address of his residence to the Investigating Officer and to the trial Court at the time of executing the bond and shall not change his residence without prior permission of the trial Court;

(d) provide his contact numbers as well as the contact numbers of the sureties before the trial Court. In case of change in such numbers inform in writing immediately to the trial Court;

(e) file an affidavit stating his immovable properties whether self acquired or ancestral with description, location and present value of such properties before the trial Court, if any;

- (f) not leave India without prior permission of the trial Court;
- (g) surrender passport, if any, before the trial Court within a week. If he does not possess passport, he shall file an affidavit to that effect;
- (h) mark presence before the concerned police station once in a month between 11:00 a.m. and 2:00 p.m. for a period of two years or till the trial is over, whichever is earlier;
- (i) shall maintain all the rules and regulations framed by the Municipality regarding contemporary status of corona virus/Covid-19, State Government or by any competent authority, including social distancing.

6.1 Bail bond to be executed before the trial Court having jurisdiction to try the case. It would be open for the trial Court concerned to give time to furnish the solvency certificate, if prayed for.

6.2 If breach of any of the above conditions is committed, the trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities shall release the applicant forthwith only if the applicant is not required in connection with any other offence for the time being.

6.3 At the trial, the concerned trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

7. Rule is made absolute accordingly. Direct service is permitted.