

(2020) 08 GUJ CK 0288

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 11723 Of 2020

Prahladbhai Mansukhbhai Thakkar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 28-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 306, 498A
Dowry Prohibition Act, 1961 — Section 3, 7

Citation : (2020) 08 GUJ CK 0288

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

Bench : Single Bench

Advocate : C B Dholakia, RJ Goswami, H.K. Patel

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This Application is filed by the Applicant - father-in-law of the deceased under Section 439 of the Code of Criminal Procedure for enlarging him on Regular Bail in connection with FIR No.11192050200770 of 2020 registered with Sanand Police Station, District: Ahmedabad (Rural) for the offences punishable under Sections 306 and 498A of the Indian Penal Code and under Sections 3 and 7 of the Dowry Prohibition Act.

2. Heard learned Advocate Mr. R.J. Goswami for the Applicant and learned APP Mr. H.K. Patel for the Respondent-State through Video Conference.

Factual Matrix of the Case

3. It is alleged in the FIR that the daughter of the first informant i.e. deceased got married with accused no.1 namely Sureshbhai Prahladbhai Thakkar, son of the applicant, before four years. After some span of time, cruelty was committed upon the deceased by saying that the deceased is black and has not brought anything at the time of marriage and an amount of Rs. 5 Lac was demanded

from her. It is alleged that before 8 days the deceased was taken by the first informant at her home but after 3 to 4 days, again the deceased was sent to her matrimonial home and thereafter the present incident has occurred. It is alleged that first informant and her relatives including her husband, etc. went to the house of the accused, where the accused was present and one of the witnesses viz. Ratilal Kanbhai Bharwad has stated that the deceased was found hanging in the house and cut the saree and deceased put on the floor, but the deceased had succumbed to the injuries, therefore, in the aforesaid facts and circumstances, FIR came to be registered.

Submission of the Parties:

4. Learned Advocate for the Applicant - father-in-law of the deceased has submitted that he is innocent as he has not taken part in the offence as alleged. He has family roots in the society and therefore, he is not likely to flee away from justice. That the charge sheet is not filed. That he will abide by whatever conditions imposed by the Hon'ble Court. He has further submitted that there is no direct involvement of the Applicant - father-in-law in the present case so far as allegation is concerned. There are no antecedents against the Applicant - father-in-law. It is further submitted that marriage span is of only 4 years. He has therefore prayed that discretion may kindly be exercised and regular bail be granted to the Applicant - father-in-law.

5. Per contra, learned APP has vehemently argued that though there is no antecedent, but in case of enlargement of applicant on regular bail, he may hamper or tamper with the witnesses. The discretion may not be exercised in favour of the Applicant - father-in-law and ultimately he has opposed grant of regular bail looking to the nature and gravity of offence, involvement of the Applicant - father-in-law. He further submitted that if the Hon'ble Court is inclined to grant bail then in such case strict conditions may be imposed to secure the presence of the Applicant - father-in-law.

Merits of the Case:

6. This court has considered the following aspects:

(a) That even if it is a prima facie case, then also as such there is no antecedent.

(b) That the applicant is father in law and not prime accused.

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

(d) That the learned Advocate for the Applicant has submitted that the Applicant Accused is not likely to flee away.

(e) That the Applicant is in custody since 14.07.2020.

(f) 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.

7. 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, the present Application deserves to be allowed and accordingly stands allowed. The Applicant Accused - PRAHLADBHAI MANSUKHBHAI THAKKAR is ordered to be released on regular bail in connection with FIR No.11192050200770 of 2020 registered with Sanand Police Station, District: Ahmedabad (Rural) on executing a personal bond of Rs. 25,000/- with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that he 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, to the Trial Court within a week. If he does not possess passport, he shall file an Affidavit to that effect.

(h) shall not hamper or tamper with the witnesses.

(i) shall maintain all the rules and regulations framed by the Municipal Corporation regarding contemporary status of corona virus/Covid-19, State Government or by any competent authority, including social distancing.

8. 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.

9. 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 will release the Applicant forthwith only if he is not required in connection with any other offence for the time being.

10. Rule is made absolute. The Registry is directed to communicate this order by Fax / by E-mail to the concerned Court / Authority.