

**(2023) 04 GUJ CK 0111**

**In the Gujarat High Court**

**Case No : R/Criminal Misc.Application No. 5562 Of 2023**

Prakashji Dalsangji Thakor

APPELLANT

Vs

State Of Gujarat

RESPONDENT

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**Date of Decision : 27-04-2023**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 439  
Indian Penal Code, 1860 — Section 34, 147, 148, 149, 302, 307, 323, 324, 326  
Gujarat Police Act, 1951 — Section 135

**Citation : (2023) 04 GUJ CK 0111**

**Hon'ble Judges : Nirzar S. Desai, J**

**Bench : Single Bench**

**Advocate : Pratik B Barot, Chetna Shah**

**Final Decision : Allowed**

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## **Judgement**

Nirzar S. Desai, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being I-C.R.No.11195044220745 of 2022 dated 27.9.2022 registered with Shihori Police Station, District: Banaskantha for offences punishable under Sections 302, 307, 326, 324, 323, 147, 148, 149, 34 of Indian Penal Code and under Section 135 of the Gujarat Police Act.

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

3. 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. Learned APP further states that with a view to secure the presence of present applicant at the time of trial suitable conditions may be imposed.

4. Learned advocates appearing on behalf of the respective parties do not press

for further reasoned order.

5. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

6. This Court has considered following aspects:-

(a) applicant is in jail since 7.10.2022;

(b) investigation is over and charge-sheet is filed;

(c) as per the statement of one Rajubha Nanubha Vaghela and statement of Indubha Bharatsinh Vaghela who are the injured eye-witnesses, the only role attributed to present applicant is only of giving kick and fist blows to that injured witness;

(e) there is no past antecedent reported against the present applicant;

(f) nothing contrary to the aforesaid could be pointed out by learned APP.

(g) there was free fight between two rival group;

(h) there are cross FIR registered against the two rival groups.

In the facts and circumstances of the present case, I am inclined to consider the case of the present applicant.

7. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra Vs. Central Bureau of Investigation, reported in [2012] 1 SCC 40.

8. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being I- C.R.No.11195044220745 of 2022 dated 27.9.2022 registered with Shihori Police Station, District: Banaskantha 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 India without prior permission of the concerned trial court;

[e] mark presence before the concerned Police Station between 1st to 10th day 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 the concerned trial court;

[g] not to enter into District Banaskantha except for marking presence before the concerned police station till the trial is over;

The authorities shall adhere to its own Circular relating to COVID-19 and, thereafter, 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. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Sessions Court to delete, modify and/or relax any of the above conditions, in accordance with law.

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

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