

(2021) 12 GUJ CK 0014
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 18691 Of 2021

Rahulbhai Jayeshbhai Raghvani

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 02-12-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 120(B), 302, 323, 365, 504
Gujarat Police Act, 1951 — Section 135

Citation : (2021) 12 GUJ CK 0014

Hon'ble Judges : Umesh A. Trivedi, J

Bench : Single Bench

Advocate : Rajesh O Gidiya C.M.Shah

Final Decision : Allowed

Judgement

Umesh A. Trivedi, 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 C.R.No.11190004211407 of 2021 registered with Gadhada Police Station, District - Botad, for the offence punishable under Sections 302, 365, 323, 504, 114 and 120(B) of the Indian Penal Code as also under Section 135 of the Gujarat Police Act.

2. Learned Advocate 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 APP appearing on behalf of 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 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. Following aspects are considered:

(a) The investigation is over and charge-sheet is filed yesterday i.e. 01.12.2021, as disclosed by the learned APP;

(b) The applicant is in custody since 23.09.2021;

(c) There is no independent oral version or documentary evidence appearing in the papers of charge-sheet against the applicant;

(d) His involvement into the case appears to be based on statement of co-accused;

(e) Though incident of murder occurred into the field of father of the present applicant, it is not a prosecution case at all that the applicant is responsible for the same;

(f) Though alleged incident took place on 05.09.2021, an FIR for the same came to be registered on 06.09.2021, first report to change the time of incident was reported to the Magistrate on 06.09.2021, second report of the same date to add Section 302 of IPC was also made. However, on 07.09.2021, a further report came to be filed to the Court requesting to add names of further 6 accused whose names revealed during the course of investigation and also to add Section 120(B) of IPC. Secondly, up to that date, name of present applicant is not revealed. However, vide report dated 18.09.2021 addressed to the Magistrate, name of the present applicant is revealed, that too, from the statement of the co-accused;

(g) Learned advocate for the applicant submitted that there are no criminal antecedent of the applicant, which is also confirmed by the learned APP through the Investigating Officer, who is present before the Court;

In the facts and circumstances of the present case, I am inclined to consider the case of the 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 C.R.No.11190004211407 of 2021 registered with Gadhada Police Station, District - Botad, 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] 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;

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. 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.

10. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order. Rule is made absolute to the aforesaid extent. Direct service is permitted.