

(2020) 12 GUJ CK 0047
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 10600 Of 2020

Rajan @ Maya Ramprasad Choudhary	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 16-12-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 143, 144, 147, 148, 149, 427, 294(B), 302, 307, 324, 323, 504, 506(2)
Gujarat Police Act, 1951 — Section 135(1)

Citation : (2020) 12 GUJ CK 0047

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Rajendra D Jadhav, Hardik A Dave, Shruti Pathak

Final Decision : Allowed

Judgement

A.S. Supehia, J

1. Heard the learned advocates for the respective parties through video conferencing.

2. 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 C.R.No.11210025200343 of 2020 with Limbayat Police Station, Surat City for the offences punishable under Sections 302, 307, 324, 323,

143, 144, 147, 148, 149, 427, 294(B), 504, 506(2) and 114 of the Indian Penal Code, 1860 and under Section 135(1) of the Gujarat Police Act.

3. Learned advocate for the applicant has submitted that the allegations made against the applicant are vague and he has been falsely implicated in the

alleged offence. He has further submitted that the applicant has been arrested on 05.02.2020 and has been incarcerated since then. He has also

submitted that the present applicant has not played any main role in the commission of the alleged offence of murder of the complainant. He has submitted that in fact it is merely alleged in the charge-sheet that the applicant was standing away apart from the spot of the quarrel and that the applicant is merely found to provoke other co-accused to only cause damage to the complainant's property. He has submitted that the applicant is nowhere in the investigation, found to have either inflicted knife blow to the complainant himself or have provoked other co-accused persons to cause death of the complainant. He has also submitted that no evidence found on record which shows that the present applicant was personally involved in actual commission of offence.

3.1 Learned advocate for the applicant has further submitted that considering the statement of the witnesses recorded during the course of investigation, it can clearly be made out that the person, who actually inflicted knife blows on the body of the complainant, was the one wearing red shirt who, later on, during the course of investigation, was found out to be one Dipak @ Dipu Pawan Pande (original accused No.4). Thus, he has submitted that the present applicant has never been personally involved in the actual commission of the alleged offence, nor there are any statement of witnesses incriminating the applicant of provoking other co-accused to cause death of the complainant.

3.2 Learned advocate for the applicant has submitted that in fact, the only role played by the applicant was merely provoking other co-accused to cause damage to the complainant's property.

4. 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. She has submitted that the present applicant is captured in the CCTV footage, who was present with the other co-accused. She has submitted that in fact looking to the seriousness of the offence, the present application may not be allowed.

5. Learned advocate Mr.Hardik Dave appearing for the complainant has submitted that in fact the application for regular bail of the co-accused viz.Rahul Mithailal Varma was not entertained by the Coordinate Bench of this Court and he was constrained to withdraw the same.

6. Learned Advocates appearing on behalf of the respective parties do not press

for a further reasoned order.

7. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers of charge-sheet. Following aspects are

considered :-

- i) The applicant is in custody since 05.02.2020;
- ii) The investigation is concluded and charge-sheet is filled;
- iii) No antecedents were pointed out by the advocates appearing for the complainant as well as by the learned APP;
- iv) Prima facie the allegations made against the applicant appear to have been that he has instigated the other co-accused to damage the complainant's property;
- v) The investigation also reveals that the applicant had not assaulted the deceased.

This Court has taken into consideration the law laid down by the Apex Court in the case of Sanjay Chandra v. Central Bureau of Investigation, [2012]

1 SCC 40.

8. Having regard to the above submissions and in the facts and circumstances of the case and considering the nature and gravity of accusation made

against the applicant in the FIR, this Court is of the view that discretion is required to be exercised in favour of the applicant for grant of bail and, since

there is no possibility of tampering with the evidence as charge-sheet is already submitted. Moreover, the applicant assures that he will abide by the

terms and conditions that may be imposed by the Court and shall not commit any breach.

9. Further I do not intend to go into the merits of the matters and I am persuaded to exercise my discretion in favour of the applicant. The investigation

is over and the charge-sheet has already been filed and the trial would take a considerable long period of time.

10. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with C.R.No.11210025200343 of

2020 with Limbayat Police Station, Surat City on executing personal bond of Rs.10,000/- (Ten Thousand) with one surety of 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 & shall not obstruct or hamper the police investigation and shall not to play mischief

with the evidence collected or yet to be collected by the police;

(c) surrender passport(s), if any, to the Trial Court within a week;

(d) not leave the State of Gujarat without prior permission of the

(e) mark presence before the concerned Police Station once in a 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 Trial Court;

11. 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.

12. 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.

13. 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.

14. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent.

15. Registry is directed to intimate the concerned jail authority and the concerned Sessions Court about the present order by sending a copy of this

order through Fax message, email and/or any other suitable electronic mode.

16. Learned advocate for the applicant is also permitted to send a copy of this order to the concerned jail authority and the concerned Sessions Court

through Fax message, email and/or any other suitable electronic mode.