

(2022) 01 GUJ CK 0055

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 21925 Of 2021

Ramabhai Bhimabhai Sindhal (Rabari)

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-01-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 120B, 147, 148, 149, 302, 341, 504

Gujarat Police Act, 1951 — Section 135

Citation : (2022) 01 GUJ CK 0055

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

Bench : Single Bench

Advocate : Denish V Mavadhiya, Hardik Soni

Final Decision : Allowed

Judgement

A.S. Supehia, J

1. Heard the learned advocates for the respective parties.

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.I-89 of 2018 with Keshod Police Station, District Junagadh for the offences punishable under Sections 302, 504, 147, 148, 149,

341 and 120B of the Indian Penal Code, 1860 and under Section 135 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 21.06.2018 and has been incarcerated since then.

4. At the outset, learned advocate for the applicant has submitted that the

accused no.2-Divyesh Ramabhai Bhimabhai Sindhal, accused no.7-Sarman

@ Bhupat Kanabhai Chavda, accused no.3-Rama @ Boghabhai Kanabhai Chavda and accused no.8-Virabhai Punjabhai Sindhal have been enlarged

on regular bail by this Court. He has submitted that there are two crucial eye witnesses, who are examined by the trial court, have turned hostile.

Further, he has submitted that in the medical history recorded by Dr.Bhaviben Vinodbhai Vachhani, the deceased has referred the accused i.e.

Rajubhai, Bukato, Bogho and other seven to eight persons. He has also referred to the deposition of the concerned doctor recorded below Exh.50 as

the prosecution witness no.7 and has submitted that the name of the applicant does not figure neither in the history nor in the deposition of such doctor.

Thus, he has submitted that since the applicant is incarcerated in jail since 21.06.2018, he may be enlarged on bail.

5. On the other hand, vehemently opposing the aforesaid application, the learned Additional Public Prosecutor appearing for the respondent-State has

submitted that there is direct involvement of the present applicant in the offence as the investigation reveals that he has assaulted the deceased. He

has submitted that looking to the role and seriousness of the offence, the applicant may not be released on bail.

6. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers. Following aspects are considered :-

(i) The applicant is in custody since 21.06.2018;

(ii) The investigation has concluded and chargesheet is filed;

(iii) The application is filed pursuant to the liberty reserved under the order dated 14.02.2019;

(iv) The crucial eye witnesses have also turned hostile.;

(v) The medical history recorded by the doctor does not reveal the name of the applicant;

(vi) Accused no.2-Divyesh Ramabhai Bhimabhai Sindhal has been enlarged on bail vide order dated 12.06.2020 passed in Criminal Misc. Application

No.3500 of 2020, accused no.7-Sarman @ Bhupat Kanabhai Chavda has been enlarged on bail vide order dated 31.01.2020 passed in Criminal Misc.

Application No.22700 of 2019, accused no.3-Rama @ Boghabhai Kanabhai Chavda has been enlarged on bail vide order dated 28.11.2019 passed in

Criminal Misc. Application No.2761 of 2019 and accused no.8-Virabhai Punjabhai

Sindhal has been enlarged on bail vide order dated 29.10.2018

passed in Criminal Misc. Application No.18509 of 2018 by this Court;

(vii) This Court has also perused the investigation papers produced in the application.

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.

7. 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.

8. 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.

9. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with C.R.No.I-89 of 2018 with

Keshod Police Station, District Junagadh 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 Trial Court concerned;

(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;

10. 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.

11. 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.

12. 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.

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

14. 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.

15. 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.