

(2023) 06 GUJ CK 0104
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 10969 Of 2023

Rasulmiya Samadmiya Chauhan

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 30-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 120(B), 302, 506(2)
Gujarat Police Act, 1951 — Section 135

Citation : (2023) 06 GUJ CK 0104

Hon'ble Judges : M. R. Mengdey, J

Bench : Single Bench

Advocate : YV Brahmbhatt, Vrunda Shah

Final Decision : Allowed

Judgement

M. R. Mengdey, J

1. RULE. Learned APP waives service of rule for the respondent-State.
2. 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.11206050230064/2023 registered with Nandasan Police Station, Mehsana for offence under Sections 302, 506(2), 120(B) & 34 of the Indian Penal Code and Section 135 of the Gujarat Police Act.
3. Learned advocate appearing on behalf of the applicant submits that in present case, investigation is over and charge is filed. He submitted that the only role attributed to the present applicant in the offence in question is of catching hold the deceased. The present applicant has not inflicted any fatal blow to the deceased. He also submitted that the deceased was taken to two hospitals and before each hospital, the different history as regards the incident was given. He, therefore, submitted to allow the present application and enlarge the applicant on regular bail by imposing suitable conditions.

4. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail by submitting that the offence alleged in the present case is a heinous one and the role attributed to the present applicant in commission of offence in question is also very serious. She, therefore, submitted to dismiss the present application.

5. Learned advocate Mr.M.R.Maulavi appearing for the original informant has filed an affidavit of the first informant which is taken on record. He has submitted that the deceased had informed his father that the present applicant had caught hold of him and other co-accused had inflicted a knife blows upon him. Thus, considering the role of the present applicant, the present application may be dismissed.

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

I. The FIR is registered on 19.02.2023 for the offence which is alleged to have taken place on 18.02.2023.

II. The applicant is in jail since 19.02.2023.

III. The investigation is concluded and charge-sheet is filed.

IV. Only role attributed to the present applicant is of catching hold of the deceased while the other accused person had inflicted knife blows upon the deceased. There is nothing on record to suggest that the applicant had inflicted any injury to the deceased in the entire incident.

V. Learned APP under instructions of IO is unable to bring on record any special circumstances against 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 v. Central Bureau of Investigation, reported in [2012]1 SCC 40.

8. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the FIR, without discussing the evidence in detail, prima facie, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

9. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being C.R.NO.11206050230064/2023 registered with Nandasan Police Station, Mehsana, 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 & 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, 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;

(g) not enter in the area wherein the first informant is residing till the completion of trial.

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