

(2021) 08 GUJ CK 0033

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 7119 Of 2021

Shekhar Bhausahab Pawar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 11-08-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 114, 302, 323
Gujarat Police Act, 1951 — Section 135(1)

Citation : (2021) 08 GUJ CK 0033

Hon'ble Judges : Dr Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Kishan H Daiya, Pranav Trivedi

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This successive regular bail application is filed by the Applicant â?" Accused under Section 439 of the Code of Criminal Procedure for enlarging the

applicant on Regular Bail in connection with I-C.R. No. 165 of 2019 registered with Limbayat Police Station, District- Surat for the offences

punishable under Sections 302, 323, 114 and 34 of the Indian Penal Code and Section 135(1) of the Gujarat Police Act.

2. Heard learned Advocate Mr. K. H. Daiya for the Applicant and learned APP Mr. Pranav Trivedi for the Respondent State through Video

Conference.

3. The brief facts of the case are that on the date of incident on 02.06.2019 the complaint was registered by Pappu Chotubhai Patil that unknown

persons attacked the brother of complainant with knife. That due to several

injuries, on calling 108 ambulance and after examination, the injured succumbed to injuries and accordingly the FIR came to be registered against unknown person. Submission of the Parties:

4. Learned advocate for the applicant - accused has submitted that this is a successive bail application. He submitted that the Court, while disposing of the Criminal Misc. Application No. 11969 of 2020 as withdrawn, had granted liberty to file a fresh application after six months. Accordingly, the present application is filed. He further submitted that the trial has not begun yet and even charge is also not framed. He also submitted that the role of the present applicant was that he caught hold of the deceased. He further submitted that the applicant has preferred bail application in the concerned court below, however the same was rejected by the court below. He submitted that the applicant is an innocent person and is falsely implicated in the crime in question. It is submitted that the applicant no direct role is played by the applicant in the commission of the crime. Further, the applicant is in custody since 03.06.2019.

4.1 Learned advocate for the applicant - accused has submitted that the applicant has family roots in the society and therefore, he is not likely to flee away from justice. That, the charge-sheet is filed and hence, there is no possibility of tampering and hampering with the evidence. That, the applicant will abide by whatever conditions imposed by the Court. He has, therefore, prayed that discretion may kindly be exercised and grant bail to the applicant." accused.

5. Per contra, learned APP has vehemently opposed the present application for grant of regular bail. It is submitted that the trial has not begun because of pandemic situation of contemporary virus-covid 19, therefore the trial Court was not in a position to work physically. Further, it is urged that this is a successive bail application and there is no change in circumstances. Thus, looking to the nature and gravity of the offence, it is requested that this Court may not exercise the discretion in favour of the applicant.

Merits of the Case:

6. This court has considered the following aspects:

(a) in the present case it is an admitted fact that the applicant - accused has come for this application after the charged sheet is filed;

(b) as per catena of decisions of Hon'ble Supreme Court, there are mainly three factors which are required to be considered by the court i.e.

prima facie case, availability of applicant - accused at the time of trial and hampering and tampering with the witnesses by the accused;

(c) the learned advocate for the applicant has submitted that the applicant is not likely to flee away;

(d) the applicant is in custody since 03.06.2019;

(e) law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. C.B.I., (2012) 1 SCC 40, wherein it is held that bail is a rule and jail is

an exception and there should not be pre-trial punishment.

7. Having heard the learned advocates for the parties and perusing the papers available on record as well as taking into consideration the facts of the

case, it appears that the applicant is implicated in the offence punishable under section 302 r/w. Section 135(1) of the G.P. Act. At this stage, the

Court is not required to go deep into the evidence as it is purely a matter of trial. That, earlier this Court had granted liberty to file a fresh application

after a period of six months, if the trial does not commence. As per statement of learned advocate for the applicant trial is not yet commenced. The

role attributed to the present applicant is that he caught hold of the deceased. The Court may reiterate the principle laid down by the Hon'ble Apex

Court in Sanjay Chandra (supra), there should not be pre-trial punishment. Least is to say that, charge-sheet in the case on hand is filed and hence,

there is no possibility of tampering and/or hampering with the evidence. Considering the charge-sheet papers as well as the nature of allegations,

gravity of accusation, availability of the applicant - accused at the time of the trial etc. and last but not the least, the role attributed to the present

applicant - accused, the present application deserves to be allowed and is accordingly, allowed. The applicant - accused is ordered to be released on

bail in connection with the aforesaid FIR on executing a personal bond of Rs.25,000/-(Twenty Five Thousand only) with one surety of the like amount

to the satisfaction of the trial Court, subject to the following conditions that he shall:

(a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from

disclosing such facts to the Court or any Police Officer or tamper with the

evidence;

(b) maintain law and order and not to indulge in any criminal activities;

(c) furnish the documentary proof of complete, correct and present address of his residence to the Investigating Officer and to the trial Court at the

time of executing the bond and shall not change his residence without prior permission of the trial Court;

(d) provide his contact numbers as well as the contact numbers of the sureties before the trial Court. In case of change in such numbers inform in

writing immediately to the trial Court;

(e) file an affidavit stating his immovable properties whether self acquired or ancestral with description, location and present value of such properties

before the trial Court, if any;

(f) not leave India without prior permission of the trial Court.

(g) surrender passport, if any, to the trial Court within a week. If he does not possess passport, he shall file an affidavit to that effect;

(h) mark presence before the concerned police station on every 1st day of each English calendar month between 12:00 p.m. to 2:00 p.m. for a period

of one year or till the trial is concluded, whichever is earlier;

(i) shall maintain all the rules and regulations framed by the Corporation regarding contemporary status of corona virus/Covid-19, State Government or

by any competent authority, including social distancing.

8. Bail bond to be executed before the trial Court having jurisdiction to try the case. It would be open for the trial Court concerned to give time to

furnish the solvency certificate if prayed for.

9. If breach of any of the above conditions is committed, the trial Court concerned will be free to issue warrant or take appropriate action according to

law. The authorities will release the applicant forthwith only if he is not required in connection with any other offence for the time being.

10. At the trial, the concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.

11. Rule is made absolute to the aforesaid extent.

Direct service is permitted.