

(2020) 01 GUJ CK 0085

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 21203 Of 2019

Sunilbhai Bharatbhai Parmar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 120B, 201, 279, 302, 304(A)
Motor Vehicles Act, 1988 — Section 177, 184

Citation : (2020) 01 GUJ CK 0085

Hon'ble Judges : Vipul M. Pancholi, J

Bench : Single Bench

Advocate : RJ Goswami, Siddharth R Kheskani, HK Patel, Minhaj M Shaikh

Final Decision : Allowed

Judgement

Vipul M. Pancholi, J

1. Mr.Minhaj M. Shaikh, learned advocate, states that he has received instructions to appear on behalf of the original first informant. He is permitted to file his Vakalatnama in the Registry. He has tendered an affidavit-in-reply filed by the first informant. The same is taken on record.

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.I-69 of 2018 registered with Anklav Police Station, District Anand, for offence under Sections 279, 302, 304(A), 201, 120B and 114 of the Indian Penal Code and Sections 177 and 184 of the Motor Vehicles Act.

3. Learned advocate for the applicant submitted that the applicant is not named in the FIR. In fact, the FIR is filed under Sections 279 and 304(A) of the Indian Penal Code and Sections 177 and 184 of the Motor Vehicles Act. However, subsequently, Section 302 of IPC is added and now the charge- sheet is filed.

4. Learned advocate for the applicant has referred the counter of the charge-

sheet, which is placed on record at Page-18 of the compilation. After referring to the same, it is contended that the co-accused Raysingbhai @ Amitbhai Rasikbhai Parmar was driving the truck in question. It is further submitted that the said co-accused has been enlarged on bail by the co-ordinate Bench of this Court vide order dated 25.09.2019. Copy of the said order is placed on record.

5. It is further submitted that as per the case of the prosecution, original accused Nos.2 to 5 as well as co-accused Tushar @ Girish Khodabhai Talpada have hatched the conspiracy. It is submitted that the only allegation against the applicant is that he was a part of the conspiracy. However, when the co-accused Raysingbhai @ Amitbhai Rasikbhai Parmar has been enlarged on regular bail by the co-ordinate Bench of this Court, on the ground of parity, the case of the applicant be considered.

6. It is further submitted that the order passed by the co-ordinate Bench of this Court in the case of co-accused has not been challenged before the Honourable Supreme Court.

7. 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.

8. Learned advocate Mr.Minhaj M. Shaikh appearing for the original first informant has referred the averments made in the affidavit-in-reply filed by the first informant and submitted that the present applicant has committed serious offence and, therefore, this Court may not exercise discretion in his favour.

9. Learned APP has referred the statement of the witness Siddique Mohammad Surti as well as placed reliance upon the Call Data Records (CDR) collected during the course of investigation. After referring to the same, it is submitted that the applicant along with other co-accused have hatched conspiracy and, thereafter, the incident in question has taken Place. It is submitted that two other co-accused are still absconding and, therefore, this Court may not exercise discretion in favour of the applicant.

10. Learned Advocates appearing on behalf of the respective parties do not press for further reasoned order.

11. 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.

12. This Court has considered following aspects:

(a) I have considered the submissions canvassed by the learned advocate for the applicant. I have also considered the role attributed to the present applicant as well as co-accused Raysingbhai @ Amitbhai Rasikbhai Parmar, who has been

enlarged on bail by the co-ordinate Bench of this Court. It is not in dispute that till today, the said order has not been set aside by the Honourable Supreme Court;

(b) I have also considered the statement given by the witness Himmatbhai Prabhatsinh Solanki, a copy of which is placed on record at Page-67 of the compilation;

(c) I have also considered the fact that Motor Accident Claim Petition is also filed before the Motor Accidental Claims Tribunal, Anand, for the accident in question, in which, three persons died;

(d) it is submitted by the learned advocate for the applicant that the concerned Tribunal has passed an interim order dated 09.03.2019. Copy of the said order is placed on record at Page-74 of the compilation;

(e) it is submitted that when the first informant has filed MACP before the concerned Tribunal for compensation because of the accident, which has taken place, it cannot be said that the present applicant has committed the alleged offence; and

(f) looking to the facts and circumstances of the present case, I am inclined to consider the case of the applicant.

13. 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.

14. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being C.R. No.I-69 of 2018 registered with Ankla Police Station, District Anand, 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] mark presence before the concerned Police Station between 1st to 10th day of every English calendar month for a period of six months between 11:00 a.m. and 2:00 p.m.;

[f] 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;

15. 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.

16. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

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