

(2024) 01 GUJ CK 0030

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - After Chargesheet) No. 17602 Of 2023

Vipulbhai Prabhatbhai Desai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 03-01-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 114, 302, 323, 324, 326, 506(2)

Citation : (2024) 01 GUJ CK 0030

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Ashish M Dagli, Hardik Soni

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regularbailinconnectionwith C.R.No.11209056230319 of 2022 registered with Himmatnagar 'B' Division Police Station, District Sabarkantha for the offence punishable under Sections 302, 326, 323, 324, 506(2) and 114 of the Indian Penal Code.

2. Learned advocate Mr. Dagli 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. It is submitted that FIR has been filed on 29.04.2023 and applicant has been arrested on 05.05.2023 and since then he is in judicial custody. The investigation is already completed and after submission of charge-sheet present application is preferred. It is submitted that one co-accused Nikul Desai whose role is graver than the present applicant accused has been enlarged on bail. Another co-accused Ganpatbhai Kharva whose role is similar has also been considered by the Coordinate Bench of this Court. It is alleged against the present applicant accused that he has given kick and fist blow

to the deceased. Thus, considering the aforesaid factual aspects, applicant may also be enlarged on bail by imposing suitable terms and conditions.

3. Learned APP Mr. Soni appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.

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

5. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers of the investigation and considered the allegations levelled against the applicant and the role played by the applicant. It is found out from the record that FIR has been filed on 29.04.2023 and applicant has been arrested on 05.05.2023 and since then he is in judicial custody. The investigation is already completed and after submission of charge-sheet present application is preferred. It is alleged against the present applicant accused that he has given kick and fist blow to the deceased. It is found from the record that one co-accused Nikul Desai whose role is graver than the present applicant accused has been enlarged on bail. Another co-accused Ganpatbhai Kharva whose role is similar to that of the applicant has also been considered by the Coordinate Bench of this Court. Thus, considering the above stated factual aspects, I am inclined to consider this application.

6. 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 as well as in case of Satender Kumar Antil v. Central Bureau of Investigation & Anr. reported in (2022)10 SCC 51.

7. 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.

8. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with C.R.No.11209056230319 of 2022 registered with Himmatnagar 'B' Division Police Station, District Sabarkantha, on executing a personal bond of Rs.15,000/- (Rupees Fifteen 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 State of Gujarat without prior permission of the Sessions Judge concerned;

[e] mark presence before the concerned Police Station on alternate Monday 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 this Court;

9. 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.

10. 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.

11. The present application stands allowed accordingly. Rule is made absolute. Direct service is permitted.