

(2022) 05 GUJ CK 0047

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 6504 Of 2022

?Vipulbhai Ramubhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 12-05-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 304, 337

Citation : (2022) 05 GUJ CK 0047

Hon'ble Judges : Niral R. Mehta, J

Bench : Single Bench

Advocate : Jal Soli Unwalla, Tejal A Vashi, JK Shah

Final Decision : Allowed

Judgement

Niral R. Mehta, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being I-C.R.No.11200007220372 of 2022 registered with Bhilad Police Station, District – Valsad for offence under Sections 337, 304 and 114 of the Indian Penal Code.

2. Learned senior 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.

3. Learned Additional Public Prosecutor 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. 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.

6. This Court has considered following aspects,

(a) The applicant is in jail since 16th March, 2022;

(b) Investigation is almost over, however chargesheet is yet not filed;

(c) The applicant is an employee and working as Project Manager in M/s.Desai Constructions Private Limited;

(d) Admittedly, the present applicant was not present at the time of alleged incident nor he was driving Eicher vehicle being Registration No.GJ-15-YY-8283 which fell down on the labourers doing work of footing. The said Eicher vehicle was driven by the driver and because of his negligence, parked on the edge of the pit in which labourers were doing footing work. Thus, it is not even the case that vehicle was negligently driven and parked by the present applicant;

(e) Prima facie, offence under Section 304, IPC, is not made out against the present applicant. So as to constitute the offence under Section 304, IPC, the basic ingredient is an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that by such act, it is likely to cause death. In the instant case, basic ingredient of intention is not made out and even the act of parking Eicher vehicle also cannot be attributed to the present applicant;

(f) The applicant appears to have been arraigned as an accused because he is a Project Manager. Admittedly, the construction work was going on at the site in the night hours as per the normal rules and regulations and the present applicant was not present at the site being night hours;

(g) The applicant is in jail since 16th March, 2022 and thereby no further custodial interrogation is required any more as no recovery and/or discovery be made from the present applicant and thereby the applicant may not be required to be kept behind bars during the pendency of the trial;

(h) Considering the pendency of cases in the trial courts, trial is not likely to be over within near future. Thus, the present applicant may not be required in jail during the pendency of the trial

(i) In view of the aforesaid, prima facie, it is a case of an unfortunate accident and more particularly the present applicant being Project Manager cannot be attributed any role that too with any intention;

(j) In addition to the aforesaid, it is reported that the company has already paid a sum of Rs.03,00,000/- to the family of deceased immediately and also undertook to pay statutory obligations in the Employees' Compensation Act and also any other statutory compensation;

(k) Learned senior advocate Mr.Unwalla has further assured this Court that over and above Rs.03,00,000/- and other statutory obligations, the company shall further pay a sum of Rs.05,00,000/- immediately to the family of the deceased.

In the facts and circumstances of the present case and considering the role attributed to the applicant and the allegations levelled against him, the case of the applicant deserves consideration and, therefore, I am inclined to consider the case of 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 Vs. Central Bureau of Investigation, reported in [2012] 1 SCC 40.

8. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being I-C.R.No.11200007220372 of 2022 registered with Bhilad Police Station, District – Valsad 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] a cheque of Rs.05,00,000/- (Rupees Five Lakhs Only) as assured by learned senior advocate Mr.Unwalla shall immediately be handed over to the family of deceased and affidavit to that effect shall be placed before the concerned trial court;

[f] 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.;

[g] 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.

9. The authorities shall adhere to its own Circular relating to COVID-19 and, thereafter, will release the applicant only if they are 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 prima facie

observations made by this Court in the present order.

11. Rule is made absolute to the aforesaid extent. Direct service is permitted, today. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.