

(2020) 08 GUJ CK 0027

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9404 Of 2020

Yogeshbhai Labhshankar Upadhyay

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 114, 302, 307, 323, 504, 506(2)

Citation : (2020) 08 GUJ CK 0027

Hon'ble Judges : Dr A. P. Thaker, J

Bench : Single Bench

Advocate : Vishal K Anandjiwala, Maithili Mehta

Final Decision : Allowed

Judgement

Dr. A. P. Thaker, J

[1] Heard Mr. Vishal Anandjiwala, learned advocate for the applicant and Ms. Maithili Mehta, learned APP for the respondent State through Video-conferencing.

[2] The present application is filed under Section 439 of the Code of Criminal Procedure in connection with an FIR being C.R.No. 11215025200048

registered with Sojitra Police Station, District: Anand for the offences punishable under Sections 302, 307, 323, 504, 506(2) and 114 of the Indian Penal Code.

[3] Mr. Vishal Anandjiwala, learned advocate appearing for the applicant while inviting the attention of this Court to various judgments/ Orders of this

Hon'ble Court as well as of the Hon'ble Bombay High Court, submits that the facts of those cases are similar to the facts of the present case. In those

cases, the charges are under Section 302 and the role attributed to the concerned Applicants/ Petitioners was that they caught hold of the of victim

and there were no other overt act alleged against the concerned Applicants. In this case also, the charges are under Section 302 and the role

attributed to the present applicant is that he caught hold of Mr. Darshan and there were no other overt act alleged against the present Applicant.

[3.1] It is further submitted by Mr. Vishal Anandjiwala, learned advocate for the applicant that chargesheet has been led and according to the

materials placed on record, it is clearly found that the allegation against the applicant is that of caught holding one Mr. Darshan, who has been

discharged from the hospital and from the history given to the Doctor, the name of the applicant is not mentioned but names of other accused have

been stated. He further submits that considering the nature of evidence, role attributed to the applicant that of caught hold the witness Darshan who is

discharged from the hospital and considering the facts and circumstances of the case, this application for bail may kindly be considered and the

applicant may be released on bail on stringent conditions.

[4] 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. She has submitted that the fact that of applicant caught holding of witness Darshan has facilitated in commissioning of the

crime wherein one person had died and to her have suffered injuries. She has submitted that this is not a fit case wherein any discretion may be

allowed in favour of the applicant.

[5] Having heard the learned advocates for the parties and perused the materials 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, at this stage, this Court is inclined to

grant regular bail to the applicant.

[6] This Court has considered following aspects;

(i) That Role attributed to the present applicant

(ii) The fact that the accused is in jail since 10.3.2020;

(iii) The investigation is over and the charge-sheet is led;

[7] This Court has also taken into consideration the law laid down by the Apex

Court in the case of Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40;

[8] In the result, the present application is allowed and the applicant is ordered to be released on regular bail in connection with an FIR being C.R.No.

11215025200048 registered with Sojitra Police Station, District: Anand, on executing a personal bond of Rs.10,000/- (Rupees Ten Thousands Only)

with one local surety of the like amount to the satisfaction of the learned 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 his passport, if any, to the lower court within a week;

[d] not leave the State of Gujarat without prior permission of the concerned Trial Court;

[e] mark presence before the concerned Police Station on alternate every Monday for initial six months and thereafter, on alternate Monday of every

English calendar month, for a period of six months, between 10:00 a.m. and 2:00 p.m.;

[f] furnish latest 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 Trial 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 concerned Trial Court will be free to issue warrant or take appropriate action in the matter. Bail bond to be

executed before the Trial 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. At the trial, learned 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. Rule is made absolute accordingly.

[10] Registry is directed to intimate about this order to the concerned authorities through fax, email and/or any other suitable electronic mode. Learned

advocate for the applicant is also permitted to intimate about this order to the concerned authorities through fax, email and/or any other suitable

electronic mode.