

(2024) 02 GUJ CK 0013

Gujarat High Court

Case No: R/Criminal Misc.Application (For Regular Bail - After Chargesheet) No. 22398 Of 2023

Savitaben Dalpatbhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision: Feb. 6, 2024

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 439
- Indian Penal Code, 1860 - Section 120(B), 306, 323, 504, 506(2)
- Gujarat Police Act, 1951 - Section 135

Hon'ble Judges: Divyesh A. Joshi, J

Bench: Single Bench

Advocate: Altaf Y Charkha, Bhargav Pandya

Final Decision: Allowed

Judgement

Divyesh A. Joshi, J

1. Rule returnable forthwith. Learned APP waives service of notice of rule for and on behalf of the respondent-State.

2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the FIR being C.R. No.I-11207061230748 of 2023 registered with the Shahera Police Station, Panchmahal of the offence punishable under Sections 306, 120(B), 323, 504 and 506(2) of the IPC and Section 135 of the G.P. Act.

3. Learned advocate appearing for the applicant has submitted that the applicant-accused was arrested on 05.10.2023 and since then she is in jail. Learned advocate for the applicant has also submitted that the investigation has already been completed and charge-sheet has also been filed. Learned advocate for the applicant has submitted that the present applicant-accused happens to be the mother-in-law of the deceased whose daughter got married with the deceased. It is further submitted that the allegations are to the effect that some matrimonial disputes cropped up between the daughter of the applicant-accused and the deceased, due to which, the present applicant-accused accompanied by other co-accused went to the house of the

deceased where some altercation took place between them which ultimately resulted in an assault by the accused persons upon the deceased, and to save himself from the furious assailants, the deceased ran away from the spot and jumped into the nearby situated well. Except that, no any other overt act is attributed to the applicant-accused that she has inflicted any blow to the deceased. It is moreso submitted that the applicant-accused is a lady having no past criminal antecedents. Learned advocate for the applicant-accused has further submitted that autopsy was also performed wherein only one injury was found and that too on the ankle of the deceased. It is also submitted that statement of three witnesses also came to be recorded by the Investigating Officer which reveal that when the deceased fell down in the well, the applicant-accused was not present at the scene of offence. It is further submitted that the other co-accused person has already been enlarged on bail by the trial court. Under the circumstances, learned advocate for the applicant prays that the applicant may be enlarged on bail on any suitable terms and conditions.

4. The learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. Learned APP has submitted that the role of the present applicant-accused is clearly spelt out from the police papers. The present applicant-accused is the key accused at whose instance the other co-accused persons went along with her at the house of the deceased. It was the present applicant-accused, who instigated the other co-accused due to which the unfortunate incident occurred. Therefore, considering the role attributed to the applicant-accused, this is a fit case wherein discretionary power of this Court is not required to be exercised in favour of the applicant-accused.

5. The learned advocates appearing on behalf of the respective parties do not press for further reasoned order.

6. 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. This Court has also considered the following aspects;

a) That the investigation has already been completed and charge-sheet has also been filed;

b) That the other co-accused person has already been released on bail by the trial court;

c) That the applicant-accused is a lady having no past criminal antecedents;

d) That the applicant-accused is in jail since 05.10.2023;

7. 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.

8. 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.

9. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.I-11207061230748 of 2023 registered with the Shahera Police Station, Panchmahal, 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 she 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;

10. The authorities will release the applicant only if she 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.

11. 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.

12. 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. Rule is made absolute to the aforesaid extent.

Direct service is permitted.