

2023 SCC OnLine Guj 2731

In the High Court of Gujarat at Ahmedabad
(BEFORE ILESH J. VORA, J.)

Vishal

Versus

State of Gujarat

R/Criminal Misc. Application No. 9822 of 2023

Decided on August 28, 2023

Advocates who appeared in this case:

Mr. Kishan H. Daiya(6929) for the Applicant(s) No. 1

Ms. Asmita Patel, APP for the Respondent(s) No. 1

The Order of the Court was delivered by

ILESH J. VORA, J.:— By way of this successive bail application filed under Section 439 of the Code of Criminal Procedure, the applicant-original accused no. 3 is seeking regular bail in connection with the FIR being C.R. No. 11210045210536 of 2021 registered with Pandesara Police Station, Dist. Surat, for the offences punishable under Sections 302, 307, 324, 506(2) and 114 of the IPC and Section 135(1) of the Gujarat Police Act.

2. As per the case of prosecution, the incident took place on 21.01.2021 at the place as mentioned in the charge-sheet papers. It is the case of prosecution that, on account of rivalry and grudge, the principal accused along with the present applicant with their common intention armed with deadly weapon came at the place of offence and assaulted the deceased, as a result, he succumbed to his injuries. So far as role of the present applicant is concerned, it is alleged that, he caught hold the deceased so as to facilitate the other co-accused in execution of their common intention. The applicant herein apprehended on 23.01.2021. After filing of charge-sheet, case was committed to the Sessions Court. Before the Sessions Court, out of 32 witnesses, 9 witnesses have been examined. The eye witnesses have not supported the case of prosecution.

3. Mr. Kishan Daiya, learned advocate for the applicant has submitted that, the eye witnesses have not supported the case of prosecution and there is no any recovery or discovery at the behest of the applicant herein. Thus, therefore, he may be given a concession, enlarging him on bail with appropriate terms and conditions.

4. On the other hand, opposing the contention, Ms. Asmita Patel, learned APP for the respondent-State contended that, the offence is

grave in nature and considering the evidence on record, no case is made out for exercising judicial discretion in favour of the applicant herein.

5. Heard Mr. Kishan Daiya, learned advocate for the applicant and Ms. Asmita Patel, learned APP for the respondent-State.

6. Having heard learned advocates appearing for the respective parties and upon perusal of the material placed on record, it appears that, the applicant-original accused no. 3 was apprehended on 23.01.2021 in the alleged offence. So far as his role is concerned, at the relevant time, he caught hold the deceased. Three major eye witnesses turned hostile before the Sessions Court and in cross-examination, they have not supported the case of prosecution. In these circumstances, without entering into merits of the case, considering the role attributed to the present applicant and evidence in support of charge, this Court is of the view that, the matter deserves consideration.

7. Hence, present application is allowed and the applicant is ordered to be released on regular bail in connection with the FIR being C.R. No. 11210045210536 of 2021 registered with Pandesara Police Station, Dist. Surat, on executing a personal bond of Rs. 10,000/- (Rupees Ten thousands only), with one surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that he shall;

No.	Conditions
(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 India without prior permission of the Sessions Judge concerned;
(e)	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;
(f)	not enter into jurisdiction of Pandesara Police Station till conclusion of trial;

8. 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 learned 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. 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 to the aforesaid extent. Direct service is permitted.

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