

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 720 of 2021**

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ROHITBHAI @ KALU S/O PRAVINBHAI DABHI (THAKOR)  
Versus  
STATE OF GUJARAT

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**Appearance:**

MR HIMANSU M PADHYA(1611) for the Appellant(s) No. 1  
MS JIRGA JHAVERI ADDL. PUBLIC PROSECUTOR(2) for the  
Opponent(s)/Respondent(s) No. 1  
RULE SERVED(64) for the Opponent(s)/Respondent(s) No. 2

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**CORAM:HONOURABLE MR. JUSTICE UMESH A. TRIVEDI**

**Date : 30/09/2021**

**ORAL ORDER**

1. Heard Mr. Himanshu Padhya, learned advocate for the Appellant as also Ms. Jirga Jhaveri, learned Additional Public Prosecutor for the respondent-State.

2. This Appeal is filed under Section 14A of the Scheduled Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989 praying for regular bail in connection with the FIR being C.R. No.I-11195010200292 of 2020 registered with Palanpur City West Police Station for the offences punishable under Sections 302, 34, 201 of Indian Penal Code and under Sections 3(1) (r) (s), 3(2) (v) of the Scheduled Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989.

3. Mr. Padhya, learned advocate for the Appellant submitted that since the FIR came to be filed against an unknown person, the case against the Appellant rests on circumstantial evidence. According to his submission there were two witnesses i.e. Narpatsinh Chabhalsinh Chauhan and Mobatsinh Bharatsinh Chauhan who had seen present

Appellant, co-accused and the deceased quarreling at about 11:00 p.m. on 10.6.2020. However, there is no material on record to show that there was any light so that they could identify the present Appellant as also the co-accused. Not only that since it was pitch dark at 11:00 p.m. there was no possibility of identification of an unknown person. At the same time according to his submission no test identification parade is conducted. He has further submitted that the co-accused against whom the allegation as per the prosecution case of giving blow with stone over the head of the deceased and cause of death is also cardio respiratory arrest due to hemorrhage shock due to intra cranial haemorrhage and injury to both the lungs, when he is already ordered to be released on bail by the co-ordinate Bench of this Court, there is no reason to deny bail to the present Appellant. According to his submission, merely because mobile belonging to deceased discovered at the instance of present Appellant would show his complicity into the offence. But at the same time, according to his submission when the co-accused was equally involved in the case and responsible for causing fatal injury to the deceased is released on bail, on the ground of parity the Appellant is also to be released on bail.

4. As against, Ms. Jirga Jhaveri, learned Additional Public Prosecutor submitted that apart from the release of the co-accused on bail his complicity into the offence is clear from his conduct as there is discovery of mobile which is said to have been used by the deceased with the sim cards, identified to be of the deceased by his father, his involvement is established more than that the accused who is released on bail. She has further submitted that since trial has already commenced and two of the witnesses have been examined before the Court, this Court may not release the Appellant on bail.

5. Considering the submissions made by the learned advocates for the

parties, it is clear that the co-accused who is equally responsible for an offence of murder has been released on bail by the co-ordinate bench of this Court and the case of the present Appellant cannot be distinguished on any count so far as murder of the deceased is concerned, since complicity of both the accused is established prior to the death of the deceased, both the accused would be responsible for causing murder of the deceased. Therefore, on the ground of parity the present Appellant is also required to be released on bail. The contention that trial has commenced and, therefore, he should be denied bail is not required to be entertained as this application before this Court praying for regular bail is first after the offence is registered. Therefore, even if trial has commenced this Court cannot deny his right to pray for an order of bail and if it can be considered, more particularly, when co-accused who is assigned similar role is granted bail, I see no reason to deny regular bail post submission of charge-sheet to the present Appellant who is behind the bars since 17.6.2020 and therefore, the present appeal deserves consideration.

6. In the result, the present appeal is allowed. The Appellant is ordered to be released on bail in connection with FIR registered as C.R. No.I-11195010200292 of 2020 registered with Palanpur City West Police Station for the offences punishable under Sections 302, 34, 201 of Indian Penal Code and under Sections 3(1) (r) (s), 3(2) (v) of the Scheduled Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989 on executing bond of Rs.10,000/- (Rupees Ten Thousand only) with one surety of like amount to the satisfaction of the trial Court and subject to the conditions that the Appellant 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] not leave the territory of India without prior permission of the Sessions Judge concerned;

[d] appear before the Investigation Officer concerned, as and when required for investigation purpose and attend Court concerned regularly.

[e] furnish the present address of residence along with the proof to the I.O. concerned and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of Sessions Court concerned;

7. The competent authority will release the Appellant 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 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 to the concerned Court to delete, modify or relax any of the above conditions in accordance with law. 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 Appellant on bail.

8. The appeal is hereby allowed. Rule is made absolute. Direct service is permitted.

**(UMESH A. TRIVEDI, J)**

NAIR SMITA V.