IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER CHARGESHEET) NO. 16403 of 2023

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SOYABBHAI IBRAHIMBHAI KURESHI @ JINDANI

Versus

STATE OF GUJARAT

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Appearance:
MR ANIQ A KADRI(11256) for the Applicant(s) No. 1
MS. MAITHILI MEHTA, LD. ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**

Date : 27/10/2023

ORAL ORDER

1. 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.11208052221206 of 2023 registered with the Bhaktinagar Police Station, Rajkot City of the offence punishable under Sections 302, 323, 504 read with Section 114 of the Indian Penal Code and Section 135(1) of the Gujarat Police Act.

2. Facts in brief leading to the filing of the present application are as under;

2.1 On the date of the incident, the brother of the complainant herein went to the tea stall of the accused for having some tea and at that time as he made teasing of one boy, namely, Sultan who was working at the said teal stall, both the accused, keeping grudge of the same, made scuffle

with the brother of the complainant and accused No.1 inflicted two knife blows on the front side of the left leg thigh as well as two blows on the back side of the left leg thigh of the deceased. The accused No.2, i.e, the applicant herein inflicted blows with the Tavitha (pot for preparing tea) on the head of the deceased and thereby by abetting to each other, all the accused persons have committed the offence mentioned in the complaint.

3. Learned senior advocate Mr. I.H. Syed assisted by learned advocate Mr. Aniq Kadri appearing for the applicant has submitted that the unfortunate incident took place in the heat of the moment and there was no enmity or rivalry between the applicant-accused and the deceased. The said incident had occurred due to the teasing of the boy who was working at the tea stall. There was no intention on the part of the applicant-accused nor there was any conspiracy hatched by the applicant-accused to kill the deceased. It was an act or rather reaction of the quarrel that has taken place all of a sudden between the applicant-accused and the deceased. Therefore, in absence of any intention of causing death, the ingredients of Section 302 is not attracted in the present case. Learned senior advocate Mr. Syed has submitted that the role attributed to the applicant-accused is that he has given blow to the deceased with the Tavitha (pot for preparing tea) from the tea stall on the head of the deceased. However, the Postmortem report reveals that the deceased died due to shock and haemorrhage on account of Limb Injury, which cannot be caused by Tavitha (pot for preparing tea). Learned senior counsel Mr. Syed has submitted that the cause of death

as shown in the postmortem report clearly reveals that the deceased died due to the knife blows given by the accused No.1 and not by the applicant herein. Learned senior advocate Mr. Syed has also submitted that the applicant-accused does not have any past antecedents and this is the first FIR registered against him. Learned senior advocate Mr. Syed has submitted that during the course of Panchnama, the police has seized one DVD in which the entire incident has been captured. From the said footage, it clearly appears that the deceased himself had started the quarrel and tried to hit the Tavitha to the applicant-accused. Learned senior advocate Mr. Syed has submitted that the deceased was having past criminal history. Even the person who has been shown as an eye-witness by the prosecution has not been found anywhere in the CCTV footage at the place of the occurrence. Thus, it appears from the above that the deceased himself was the instigator and had first started quarrel with the applicant-accused. Further, the complainant has also not witnessed the said incident as he was not present at the scene of offence at the time when the incident took place.

4. In such circumstances, referred to above, Mr. Syed prays that there being merit in this application, the same be allowed and the applicant-accused may be enlarged on bail on any suitable terms and conditions.

5. On the other hand, this application has been vehemently opposed by learned APP Mr. Hardik Soni and submitted that the entire incident has been recorded in the CCTV footages and there are number of eye-witnesses who have seen the

incident. Learned APP Mr. Soni has drawn the attention of this Court to the statement of one person, namely, Sultan due to whose teasing, the entire incident had occurred. He has very categorically stated in his statement that both the accused have given blows to the deceased. The present applicant-accused inflicted blows on the vital part of the body of the deceased, i.e, on the head of the deceased and caused serious injuries. Learned APP Mr. Soni has also submitted that as per the postmortem report, there are in all total six injuries on the body of the deceased and all are on the vital parts of the body. Both the accused persons have inflicted blows to the deceased and they both are the real brothers. Therefore, considering the above stated factual aspect of the matter, the bail application of the applicant-accused requires to be rejected and the applicant-accused may not be enlarged on bail.

6. I have heard learned senior counsel appearing on behalf of the appellant and the learned APP appearing on behalf of the State-respondent.

7. The law is that bail, in non-bailable cases, is not a matter of right. It is in the discretion of the Court. This discretion is not a wild horse. It has to be supported by reasons and the law governing the grant of the bails. The question of the grant of the bail cannot be put in a straight jacket formula. The Court has to take an overall view of the matter taking all relevant factors into consideration. The Law of Bails should balance between two conflicting demands, viz. shielding the Society from misadventures of persons allegedly involved in crime and the presumption of the innocence of the accused till he is

found guilty. The law also provides that, normally, grant of bail, in a case of murder, is not a rule. In a case of murder, public policy and the general state of crime of such nature, should be the consideration which should weigh with the Court while considering an application for bail. It does not mean that it is an inflexible rule. There may, even in this category of cases, be some appropriate exceptions where bail may deservingly be granted. One of the main considerations would be as to whether on the basis of the evidence and the documents on which prosecution relies, it can be said that there are grounds to believe that the accused are involved in the commission of offences punishable with death or transportation for life and, if there are such reasonable grounds on which the accused are likely to be charged of murder, then the question of grant of bail would not arise. It is not conducive to judicial health and discipline to grant bail in the present case, as it will adversely affect the administration of justice. It is also bound to provide a lever to the miscreants and anti-social elements to indulge in heinous crimes with impunity. This will weaken the moral fiber of the society and twist the arms of the law. Indeed, personal liberty is a very valuable asset, but the liberty of those who are law abiding is perhaps more valuable than the liberty of those who are out to break law as they themselves are responsible for its forfeiture. Over the centuries, we have been dealing with such cases. The person under trial for murder offence languish in jails for years because of the demands of public policy. Courts are loath to enlarge such offenders on bail. That accounts for the normal practice of the Courts to refuse bail for crimes of such nature. Unmerited grant of bail in murder case can neither serve the ends of justice and

law nor of the society. It would only serve the interest of some powerful interest groups. With the present state of our society and increase in the rate of murder, one can ill afford to be so liberal. Any reckless use of discretion, therefore, in such cases, is bound to shake the confidence of the society.

8. Looking at the application of the applicant from the above perspective, the order of the learned trial Court directing the rejection of the application seeking bail requires to be assessed and evaluated, taking into consideration the facts and circumstances of the case. The learned trial Court, after taking an overall view of the matter, has held that there are some important eye witnesses are yet to be examined in the Court. As per the case of the prosecution, the complainant itself is an eye-witness. The trial of the case is in progress.

9. In **Talib Haji Hassan** V. Madukar Parshotam reported in AIR 1958 SC 376, the Apex Court has held that a person accused of a non-bailable offence may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or life imprisonment.

10. I would also like to take a cue from the law laid down in the case of Sanjay Sharma V. State of J&K, reported in **2003 SLJ (II) 388**, which lays down that the jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the Court has to keep in mind the nature of accusations and the nature of evidence in support thereof. Severity of the punishment

which conviction will entail, the character behavior means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of accused at the trial, reasonable apprehension of the witness being tempered with, the larger interest of the public or state and other similar considerations. It is also to be kept in mind that for the purpose of granting bail, legislature has used words "reasonable, ground for believing instead of evidence which clearly envisages that the Court dealing with the grant of bail can also satisfy itself as to whether there is a genuine case against the accused and the Prosecution is able to produce prima facie evidence in support of the charge. It is however, not expected at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt. Of course, the reasons must be recorded, but without discussion of merits and demerits of the application. It has been further held by the High Court that "it is trite that many other considerations which the Court has to take into account for deciding that the bail should be granted for non-bailable offence, which are the nature and gravity of the offence.

11. I would also like to take resort to the law propounded in the case titled **Balwan Singh V. State of JK**, reported in 2004 (3) JKJ 606, wherein it has been held that the considerations which normally weigh with the Court in granting bail in non-bailable offences, are the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of accused not being securing at the trail; reasonable apprehension of the witnesses being

tampered with ; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case. The discretionary jurisdiction of the Court should be exercised carefully and cautiously by balancing rights of the accused and interest of Society. To refuse bail, it is not necessary that there should be evidence, which would practically justify a conviction. The accused is not entitled to be released if there appear reasonable grounds for believing that he has been guilty of an offence of the specified kind. The gravity of the offence involved in case of applicant is likely to induce him to avoid the course of justice and must weigh with the Court when considering the question of bail.

12. On the basis of the law to which the learned trial Court has taken recourse in its order, the learned trial Court has viewed that looking at the genesis of the occurrence and attenuation, circumstances, grounds taken in the application cannot be considered for the release of the accused on bail as a bulk of evidence of the Prosecution is yet to be recorded and that mere filing of the charge-sheet does not change the role of the applicant-accused and would also not reduce the burden of allegations levelled against the applicant-accused.

13. The order directing the rejection of the bail passed by the learned trial Court is lucid and clear. It is based on the law and logic. It cannot be tinkered with.

14. Taking a prima facie view of these factors as also taking note of the fact that the trial has already been commenced, I do not think that it would be appropriate to grant bail to the applicant at this stage. This application for bail is, accordingly,

rejected. It is made clear that nothing expressed in this order shall be taken into consideration by the trial Court while delivering its judgment on the case.

(DIVYESH A. JOSHI,J)

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