

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION NO. 8193 of 2024
(FOR REGULAR BAIL - AFTER CHARGESHEET)**

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BHARATBHAI AALEGBHAI KHARTANI (KHAVAD)
Versus
STATE OF GUJARAT

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Appearance:

MR ASHISH M DAGLI(2203) for the Applicant(s) No. 1
MR DHAWAN JAYSWAL APP for the Respondent(s) No. 1

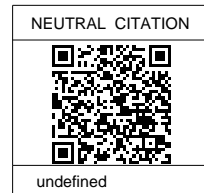
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CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 09/05/2024

ORAL ORDER

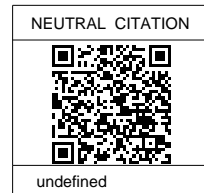
1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the FIR being C.R. No.11211045210344/2021 registered with the Sayla Police Station, Surendranagar for the offence punishable under Sections 302, 307, 120(B), 323, 324, 325, 326, 506(2), 143. 147, 148 and 149 of the Indian Penal Code, under Sections 25(1-B)(A) and 27 of the Arms Act and under Section 135 of the Gujarat Police Act.
2. Learned advocate for the applicant submitted that the incident has occurred on 06.12.2021 and on the very same day i.e. on 06.12.2021, FIR has been lodged and in connection with the same, the applicant has been arrested on 04.03.2022 and since then, he is in judicial custody. It is submitted that now the investigation is completed



and the present application has been preferred after submission of the chargesheet. Learned advocate submitted that FIR has been lodged against total 8 accused, wherein the applicant is shown as accused no.4. Learned advocate submitted that in the present case, the witnesses have changed their versions at different occasions with a sole intent to implicate the applicant and other accused in the commission of crime. Learned advocate submitted that it is the case of the prosecution that the accused no.2, Jethsurbhai Khartani is the main accused, who had actively participated in the commission of crime and he was very much available at the place of occurrence armed with wooden stick and inflicted blows upon the complainant and other injured witnesses, however, the said accused has come with specific case that he was not at all present at the place of occurrence and had gone to Government office to do his some official work and he has produced the set of documents to substantiate the said claim. Learned advocate, however, submitted that as soon as the said fact came to the knowledge of the witnesses, they have changed their stand and come with specific case that the said accused is the main accused and he is the main conspirator and entire crime has been committed by other accused at his instance and as soon as the alleged incident is completed, one of the co-accused had made phone-call to the accused no.1 and informed



about the completion of work entrusted to them. Learned advocate submitted that initially at the time of registration of complaint, the complainant has come with specific case that one of the co-accused has tried to dash dumper with the vehicle of the witnesses, wherein the complainant and other witnesses were going and subsequently, they have changed their version and come with a story that at the time of incident, two dumpers and one Bolero. Learned advocate submitted that with a sole intent to involve maximum persons in the commission of crime, narration of the story of the prosecution is changed from time to time and the said fact is reflected from the statements of the witnesses. Learned advocate submitted that the injured witness himself is the eyewitness and as per the case of the prosecution, immediately he was shifted to the hospital for the purpose of primary treatment and at that point of time, he has not disclosed the name of the present applicant and, thereafter, the dying declaration of the complainant/ injured witness was recorded, wherein he has not disclosed the name of the present applicant but subsequently they have come with specific case that at the time of commission of crime, the present applicant was having fire arms and he has fired gun shot in the air and actively participated in the commission of crime. Learned advocate submitted that other injured witnesses have also come with specific case that

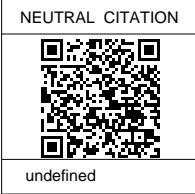


at the time of incident, the present applicant was having gun in his hand and during the course of giving statements, one of the two witnesses have come with specific case that at the time of incident, the applicant was having axe in his hand and he had inflicted blows upon the body of the complainant and other witnesses. He further submitted that as per the case of the prosecution, another eyewitness was also very much available at the place of occurrence and as per his say, the present applicant was holding iron pipe in his hand and he had inflicted blows upon the body of the complainant as well as other witnesses, therefore with a sole intent to involve the present applicant in the commission of crime and to increase the gravity of the crime, at different point of time, different stories have been created by the witnesses. Learned advocate submitted that in fact, the conduct of the complainant is also required to be taken into consideration because after submission of the chargesheet, when the matter was pending at the stage of framing of charge, the complainant side has submitted an application specifically stating that the police has not recorded the statements as per their wish and there are many discrepancies in the investigation, therefore, further investigation is required to be carried out and the charge is not required to be framed at this stage. It is, therefore, urged that considering the aforesaid



facts of the case, the applicant may be enlarged on regular bail by imposing suitable conditions.

3. Learned APP for the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. It is submitted that the role of the applicant is spelt-out from the body of the complaint as well as papers of the chargesheet and thus, there are enough material available on record connecting him with the commission of crime. Learned APP submitted that there was inimical terms between the complainant and the accused and before the occurrence of the said incident, the complainant side has made complaint against the accused persons and at that relevant time, the accused have administered threats to eliminate them, for which, application given by them is pending before the concerned police station. He further submitted that if this Court would make a cursory glance upon the contents of narration of the story as stated in the said application as well as in the FIR, in that event, it would be found out that daring attack was made by the accused and it was a premeditatedly crime committed by the accused and with the deadly weapons, they have inflicted indiscriminately blows upon the body of the complainant and other witnesses on the vital parts of the body and at that relevant point of time, the accused were aggressive and had come with an intent to eliminate all the persons and because of



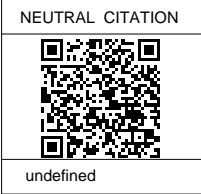
said assault, the injured was shifted to hospital for primary treatment but because of severe/grievous injuries sustained by him, it seems that he would not be able to utter a word and, hence, he might not have disclosed correct facts including the name of the present applicant and/or use of weapon by the accused at the time of commission of crime and, hence merely because of some discrepancy in the statements, the applicant cannot be escaped from the criminal liability because other witnesses, who were present at the place of occurrence and who have witnesses the incident, have described the role played by the applicant at the time of occurrence in a very categorical terms, which clearly goes on to show that at the time of commission of crime, the applicant was holding iron pipe and he has inflicted blows upon the witnesses and not only that, after commission of crime, he had made phone call to the accused no.2 and informed that whatever work has been assigned, is completed and even during the course of investigation, muddamal pipe is also recovered at the instance of the present applicant. Learned APP submitted that from the investigation papers, it is found out that the present applicant has actively participated in the commission of crime and, hence, the present application may not be entertained.

4. Learned advocates appearing on behalf of the respective parties do not press for further



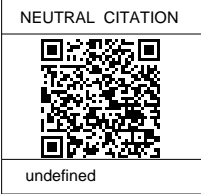
reasoned order.

5. 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. It is found out from the record that now the investigation is completed and the present application is preferred after submission of the chargesheet. It is submitted that the applicant is arrested on 04.03.2022 and since then, he is in judicial custody. It is also found out from the record that initially at the time of registration of FIR, specific name and role of the present applicant is mentioned in a very categorical terms by the complainant in the FIR but from the investigation papers, it is found out that the witnesses have changed their stand by narrating different story including the role attributed to the present applicant. Further, the co-accused have been enlarged on bail by this Court as well as by the Coordinate Bench of this Court. Thus considering the above factual aspects, I am of the opinion that this is a fit case, wherein discretionary power can be exercised in favour of the present applicant – accused.
6. 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 as well as in case of **Satender Kumar Antil v. Central**



Bureau of Investigation & Anr. reported in (2022) 10 SCC 51.

7. 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.
8. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.11211045210344/2021 registered with the Sayla Police Station, Surendranagar 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 he shall;
 - [a] not take undue advantage of liberty or misuse liberty;
 - [b] not act in a manner injuries 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;
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 Sessions Judge concerned will be free to issue warrant or 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 for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.
10. 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.
11. Rule is made absolute to the aforesaid extent. Direct service is permitted.

Sd/-
(DIVYESH A. JOSHI, J.)

Gautam