IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC. APPLICATION NO.17341 of 2020

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HARVIJAYSINH @ HARUBHA PIPLI MAHAVIRSINH CHUDASAMA
Versus
STATE OF GUJARAT

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Appearance :
MR MAULIK NANAVATI FOR MR AG JOSHI for the Applicant.
MS VIRAJ A JOSHI for the Applicant.
MS KRINA CALLA, APP for the Respondent.

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CORAM:**HONOURABLE MR. JUSTICE A.J.DESAI**

Date : 23/12/2020
ORAL ORDER

1. This successive bail application is filed under Section 439 of the Code of Criminal Procedure for regular bail in connection with F.I.R. registered at **C.R. No. I – 15 of 2019 with Nilambaug Police Station, District Bhavnagar**, for the offences punishable under Sections 302, 307, 143, 147, 148, 149, 120 (B) and 34 of the Indian Penal Code.

2. The present successive bail application has been filed by the applicant subsequent to rejection of his earlier application being Criminal Misc. Application No.13274 of 2019, mainly on the ground that after rejection of his application, the coordinate Bench of this Court vide order dated 22.10.2020 passed in Criminal Misc. Application No.3356 of 2020 has enlarged the co-accused, namely, Jaydeep @ Chino Jorsang Parmar who has played grave role than the applicant.

3. Mr. Maulik Nanavati, learned advocate appearing with learned advocate Mr. Joshi for the applicant has taken me through the papers of investigation, role alleged to have been

played by the present applicant and the role of co-accused, namely, Jaydeep @ Chino Jorsang Parmar who has been enlarged on regular bail as stated above. He would submit that there is no overt act alleged on the part of the applicant and the only allegation against the applicant is that he was instigating the co-accused including Jaydeep @ Chino Jorsang Parmar who had attacked the deceased pursuant to which he succumbed to the injuries. He, therefore, would submit that the present application seeking regular bail may be entertained not only on the ground of parity but considering the lesser role alleged to have been played by the present applicant. He, therefore, would submit that that considering the nature of offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

4. On the other hand, learned APP has taken me through the oral order dated 26.8.2019 passed by this Court in Criminal Misc. Application No.13274 of 2019 by which this Court by reasoned order rejected the bail application of the applicant. She would further submit that the said order of this Court has not been carried further by the applicant – accused and, therefore, the present application may be rejected.

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

6. I have heard learned advocates appearing for the parties. I have also gone through the oral order dated 26.8.2019 passed by this Court in Criminal Misc. Application No.13274 of 2019 by which this Court has rejected the regular bail application of the applicant. It is observed in the said order that the deceased was attacked by several persons pursuant to which he sustained 20 injuries. But the role alleged to have been played by the present applicant is that he was

instigating the other co-accused to done away the deceased. It also appears that the trial had commenced and, therefore, this Court did not entertain the application of the applicant. However, if the role played by co-accused, namely, Jaydeep @ Chino Jorsang Parmar in the crime is seen, he has been named in the FIR from the beginning and has allegedly attacked the deceased and he has been considered by the coordinate Bench of this Court and considering the fact that trial has not proceeded further due to the present Pandemic COVID-19 situation, I am of the opinion that the present application requires consideration.

7. Considering the offence as alleged in the FIR and also considering the nature of allegations made in the FIR, I am of the opinion that this is a fit case to exercise the discretion to enlarge the applicant on bail. Hence, the application is allowed and the applicant is ordered to be released on bail in connection with **C.R. No. I – 15 of 2019 with Nilambaug Police Station, District Bhavnagar**, on executing a bond of **Rs.10,000/- (Rupees Ten 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 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 at the concerned Police Station on every Monday of each 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 I.O. 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;

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 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, 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.

9. Rule made absolute to the aforesaid extent. Registry is directed to communicate this order to the concerned Jail Authority by fax / email message forthwith.

(A. J. DESAI, J)

DIPTI PATEL