

Received On: 8/1/2021

Registered On: 8/1/2021

Decided On : 21/1/2021

Duration: Y. M. D.

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Exh. No. 10

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
RAJKOT**

Cri. Misc. Application No. 54/2021

1. BHIKHUBHAI @ BHARATBHAI CHAKUBHAI CHAVDA
SCHEDULE CAST, AGED 51, OCCU: LABOUR WORK
ADDRESS:
NEW THORALA MAIN ROAD
AHEAD OF PANI NI KUI
AAMBEDKAR CHOWK
VINOD NAGAR, STREET NO. 2
RAJKOT

2. RASIKBHAI CHAKUBHAI CHAVDA
SCHEDULE CAST, AGED 44, OCCU: LABOUR WORK
ADDRESS:
NEW THORALA MAIN ROAD
AHEAD OF PANI NI KUI
AAMBEDKAR CHOWK
VINOD NAGAR, STREET NO. 2
RAJKOT

(AT PRESENT CENTRAL JAIL, RAJKOT)

:::: APPLICANTS

VERSUS

THE STATE

:::: OPPONENT/STATE

**SUBJECT: APPLICATION FOR REGULAR BAIL U/S. 439 OF
CR. P. C.**

APPEARANCE:

- LD. ADVOCATE MR. P. M. SHAH FOR THE APPLICANTS
- LD. A. P. P. MR. P. N. SHAH FOR THE OPPONENT-STATE

J U D G M E N T

1. The applicants – accused has preferred this application under section 439 of the Criminal Procedure Code for releasing them on regular bail in connection with C.R. No. 11208056201247/2020 dated 21/8/2020 of Thorala Police Station, Rajkot city for the offence punishable under Section 302, 323, 504, 143, 147, 148, 149, of I. P. C. and Sec. 135 (1) of G. P. Act.
2. Pursuant to filing of the application, notice came to be issued and served upon the opponent and the Ld. A. P. P. Mr. P. N. Shah appeared on behalf of the opponent- State and filed opinion made by the investigating Officer, Thorala Police Station, Rajkot city vide Exh. 4.
3. This Court has heard the Ld. Advocate Mr. P. M. Shah for the applicants-accused and Ld. A. P. P. Mr. P. N. Shah for the opponent-State.

4. The brief facts of the F. I. R., is that on dtd. 21/8/2020, the said F. I. R. is lodged by Jyotsnaben @ Jasminben W/o. Dharmeshbhai Anandbhai Chavda, stating that she is the wife of deceased Dharmeshbhai Anandbhai Chavda stating that at about 6:00 p. m. on 21/8/2020, when she was at her home, her younger sister-in-law came to her and told her that Nr. the shop of Rameshbhai, her husband Dharmeshbhai and (1) Rato Parmar, (2) Maulik parmar, (3) Naresh Davera, (4) Bhikhu Chavda and (5) Rasik Chavda are quarreling. Therefore, complainant and her relatives went there and they saw that her husband Dharmeshbhai was caught by Bhikhu Chavda and Rasik Chavda and Ratabhai Meghjibhai Parmar was having knife in his hand and he was stabbing the said knife on the body of her husband and her husband fell on the ground and at that time Maulik parmar, who was having iron rode and Naresh Davera, who was having stick, both started attacking her husband with iron rode and stick and at that time they tried to save her husband and there was profuse bleeding from the body of her husband and he became unconscious. Thereafter, all the accused started abusing them and went away. Thereafter, brother-in-law of complainant called 108

ambulance and staff of 108 declared her husband as dead. Under these circumstances, the above mentioned F. I. R. has been registered.

5. The Ld. Advocate Mr. P. M. Shah for the applicants-accused submitted that present bail application filed after the submission of Chargesheet and earlier no other application of present accused have been filed. The applicants/accused are 51 years and 44 years old respectively and doing labour work. It is further submitted that there is a cross complaint filed by the one of the accused i. e. accused No. 2 of the said offence against the deceased. Further, it is argued that none of the eye Witnesses has deposed that any of the injuries caused to the deceased by the present accused persons and even in the F. I. R., nowhere has been stated that any injuries to the deceased was caused by the present accused persons. The complaint is filed after 4:30 hours. It has been further argued that even when the Panchnama of the place of offence was drawn, the eye Witness has not stated the name of the present accused persons. Further, it is argued that the statements of relatives of complainant are fraudulently got up by later on. Further, it is argued that if

the statement of Satishbhai Rameshbhai Raghvani be perused, who is an independent Witness, he has deposed that he is running the shop and the incident took place near his shop and as per his statement, deceased was having knife in his hand and accused No. 2 Maulik was having pipe in his hand and they both were quarrelling and deceased started giving knife blows to Maulik, whereby accused No. 3 i. e. Nareshbhai Davera and present accused persons Bhikhubhai Chavda and Rasikbhai Chavda came there and tried to intervene the quarrel, thus nowhere in his statement, it is stated that present accused persons have done any injuries to the deceased nor they were armed with any weapons and has even not stated that present applicants/accused had caught hold the deceased as been alleged in the F. I. R.. Further, it has been submitted that even in the P. M. Report, the injuries sustained by the deceased is by the knife and looking to the contents of the F. I. R. as well as statement of the Witnesses, nowhere it has been come on record that present accused persons were armed with weapon. It has been further submitted that the deceased was head strong and history sheeter and many Criminal cases were

registered against the deceased. It is further submitted that accused persons were arrested on 24/8/2020 and Chargesheet has been filed and investigation is over and accused persons are behind the bar since almost 5 months. It is further submitted by the Ld. Advocate for the applicants/accused that the co-accused Maulikbhai Sanjaybhai Parmar i. e. accused No. 2, has already been released on bail by the order dated 22/12/2020 of Hon'ble High Court of Gujarat in R/Criminal Misc. Application No. 19535/2020 and another co-accused Nareshbhai Khodabhai Davera i. e. accused No. 3 has also been released by this Hon'ble Court, Rajkot (Shri B. B. Jadav Saheb) on 6/1/2021. It is further submitted that applicants/accused have not played any role to cause death to the deceased and as it has come on record and as alleged in the F. I. R. that the injuries caused to the deceased were by knife, which was inflicted by the accused No. 1 i. e. Ratabhai Parmar. The Ld. Advocate for the accused persons further submitted that even the other main co-accused persons, who as per allegations in F. I. R. were armed with iron pipe and stick have been granted bail in the present case and therefore, the present

applicants deserves to be released on bail on the sole ground of parity. The Ld. Advocate for the applicants has further submitted that the applicants/accused are permanent resident of Rajkot city and if they will be released on bail then they will abide by all the conditions that may be imposed by the Hon'ble Court. He has further submitted that applicants/accused will not abscond and not tamper with evidence of prosecution. Therefore, considering the facts and circumstances, he has requested to allow the present application. Ld. Advocate for the applicants/accused has relied upon the following Authorities in support of the arguments.

- (1) R/CRIMINAL APPEAL NO. 121/2020 IN THE CASE OF VINAY @ BHURO @ MUSTAN RAJUBHAI UKEDIYA VS. STATE OF GUJARAT DECIDED BY HON'BLE GUJARAT HIGH COURT ON 26/2/2020
- (2) R/CRIMINAL APPEAL NO. 19523/2020 IN THE CASE OF HARESHBHAI KARSHANBHAI PARMAR VS. STATE OF GUJARAT DECIDED BY HON'BLE GUJARAT HIGH COURT ON 22/12/2020
- (3) R/CRIMINAL APPEAL NO. 2313/2019 IN THE CASE OF FAIZAL RAJUBHAI AJLANI VS. STATE OF GUJARAT DECIDED BY HON'BLE GUJARAT HIGH COURT ON 13/1/2020

(4) CRIMINAL MISC. APPLICATION No. 12575/2015 IN THE CASE OF BAHADURSINH KHUMANSINH GOHIL VS. STATE OF GUJARAT DECIDED BY HON'BLE GUJARAT HIGH COURT ON 13/8/2015

(5) ACR – 2011 (1) 233 GUJ IN THE CASE OF GORSINGBHAI JETIABHAI MACHHAR & OTHERS VS. STATE OF GUJARAT

(6) CRIMINAL MISC. APPLICATION (FOR REGULAR BAIL) NO. 6004/2017 IN THE CASE OF VIPULBHAI KHIMJIBHAI SOLANKI VS. STATE OF GUJARAT DECIDED BY HON'BLE GUJARAT HIGH COURT on 5/5/2017

(7) 2011 (0) GLHEL-HIGH COURT 225071 IN THE CASE OF RAMESHBHAI BATUBHAI DHABI VS. STATE OF GUJARAT DECIDED BY HON'BLE GUJARAT HIGH COURT

6. Per contra, the Ld. A. P. P. Mr. P. N. Shah for the opponent-State has strongly opposed the bail application and submitted that looking to the Police Papers, accused persons have played main role in committing offence and there are 7 to 8 eye Witnesses to the present offence, who have categorically stated that present accused persons have caught hold the deceased and even in the F. I. R., same allegations has been made. It has been further submitted that on perusing the P. M. Report, injuries were caused by the sharp object and recovery and discovery of the same has been done. Chargesheet is filed. It is further

submitted that it is a heinous offence and looking to the role of the present accused persons, this Court should not exercise its jurisdiction in granting the bail. Thus, it is prayed to reject the bail application.

7. The original complainant has filed written objections against the present bail application at Exh. 8 and submitted that names of present applicants/accused are mentioned in the F. I. R. and present applicants/accused have played active role in commitment of the crime. It is further submitted that benefit of parity is not to be given to the present applicants/accused. It is further submitted that Witnesses of the said offence have described the role of the present applicants/accused and present applicants/accused are involved in committing the offence and requested to reject the bail application.

8. Regard to the submissions made by both the parties above and looking to the contents of the F. I. R., opinion filed by the investigating Officer and the Police Papers and documents produced before this Court on record, on perusing it, it transpires that the Chargesheet is filed and investigation is almost over. It is submitted by the Ld.

Advocate for the accused persons that they have been arrested on 24/8/2020, since then they have been in jail. It is submitted by Ld. Advocate for the accused persons that as per the allegations in the F. I. R., present accused persons have caught hold the deceased but on perusing the statement of Satishbhai Rameshbhai Raghvani, who is independent eye Witness to the offence has stated that he is running the shop and the incident took place near his shop and as per his statement, deceased was having knife in his hand and accused No. 2 Maulik was having pipe in his hand and they both were quarrelling and deceased started giving knife blows to Maulik, whereby accused No. 3 i. e. Nareshbhai Davera and present accused persons Bhikhubhai Chavda and Rasikbhai Chavda came there and tried to intervene the quarrel, thus nowhere in his statement, it is stated that present accused persons have done any injuries to the deceased nor they were armed with any weapons and has even not stated that present applicants/accused had caught hold the deceased. It is further submitted that there is a cross complaint filed by the one of the accused No. 2 of the said offence against the deceased. It has been further submitted that the deceased

was head strong person and history sheeter and many Criminal cases were registered against the deceased. It is even submitted by the Ld. Advocate for the accused persons that as per the allegations in the F. I. R., accused No. 2 Maulikbhai Sanjaybhai Parmar, who has given blow with iron pipe to the deceased and accused No. 3 Nareshbhai Khodabhai Devra, who has given stick blow to the deceased are being released on bail by the order dated 22/12/2020 of Hon'ble High Court of Gujarat in R/Criminal Misc. Application No. 19535/2020 and by this Hon'ble Court, Rajkot (Shri B. B. Jadav Saheb) on 6/1/2021. It is also submitted that according to the P. M. Report, there were stab (incise) wounds caused by the sharp object and same is the reason for the death of the deceased, which seems to be caused by the knife injuries, which is caused by accused No. 1 Ratabhai Meghajibhai Parmar as alleged in the F. I. R.. Thus, nowhere on record it has come that present accused persons were armed with any weapons or have inflicted any injuries to the deceased. It has been further submitted that the deceased was head strong person and history sheeter and many Criminal cases were registered against the deceased. Further, as Hon'ble High

Court of Gujarat and this Hon'ble Court, Rajkot (Shri B. B. Jadav Saheb) has granted regular bail to the accused No. 2 Maulikbhai Sanjaybhai Parmar and accused No. 3 Nareshbhai Khodabhai Davera of the present offence, present applicants/accused are seeking bail on ground of parity by relying upon Judgement passed by Hon'ble Gujarat High Court in case of Rameshbhai Batubhai Dabhi Vs. State of Gujarat in Criminal Misc. Application No. 1475/2011 dated 19/4/2011, where it is held that the parity should be considered and applied if same set of facts exists unless there being any extraordinary circumstances or is striking dissimilarities to deviate from the rule of parity.

This Court has gone through Authorities produced on record by the Ld. Advocate for the accused persons, wherein the Hon'ble Gujarat High Court in Criminal Appeal No. 121/2020 dated 26/2/2020 in the case of Vinay @ Bhuro @ Mustan Rajubhai Ukediya Vs. State Of Gujarat has held as under:

'Having considering the facts of the case and submissions made by learned advocates for the respective parties as well as learned APP for the respondent-State, it appears that a complaint was filed by the respondent No.2 against 4 persons

alleging that this offence was committed on 19th July 2019. From the averments made in the complaint, the present appellant and co-accused were reached at the place of incident on an activa motor cycle and some quarrel was started. Thereafter, the other co-accused namely Faizal and Ankit caught hold the deceased. Thereafter, again quarrel was started with the deceased. Co-accused Faizal , Ankit and present appellant caught hold the deceased and co-accused Sahejad had assaulted with a knife on the body of the deceased and thereafter, all of them ran away from the scene of the offence. From the entire police papers and the complaint, it is nowhere stated that any weapon was used by the present appellant nor any blow was given by the present appellant. No injury was caused by the present appellant to the deceased and no other allegations are made against the present appellant of using any weapon in committing offence or causing the injury to the deceased. Investigation is completed and charge-sheet is filed by the prosecution. From the police papers, produced on record, it appears that present appellant is also involved in another offence punishable under Sections 143,147, 323, 326 etc. of I.P.C. registered with Rajkot Taluka Police Station vide C.R. No.-I. 28 of 2019. Considering the role played by the present appellant and as the co-accused is released on bail in Criminal Appeal No.2313 of 2019 having similar role played by him in

the offence, the prayer made by the present appellant requires for consideration.'

Even in the case of Vipulbhai Khimjibhai Solanki Vs. State Of Gujarat Decided By Hon'ble Gujarat High Court in Criminal Misc. Application (for Regular Bail) No. 6004/2017 dated 5/5/2017, it is held as under:

'(2) Learned Advocate for the applicant submits that the present applicant is an innocent person, however, he has been falsely implicated in the alleged offence. it is submitted that the role attributed to the present applicant as per the F. I. R. that he caught hold the deceased person, and one Vijay has inflicted stick blow, and the another co-accused namely Vinod inflicted knife blow upon the deceased. It is further submitted that the co-accused namely Vijay Karshanbhai Rathod who has given stick blow upon the deceased is enlarged on bail by the co-ordinate bench of this Court vide Order dated 2/12/2016 in Criminal Misc. Application No. 26357 of 2016, therefore, on the ground of parity, the present applicant may also be enlarged on bail.....

(5) Regard being had to the above submissions and considering the nature and gravity of accusation made against the applicant as also considering the fact that the co-accused namely Vijay Karshanbhai Rathod who has given stick blow upon the deceased

is enlarged on bail by the co-ordinate bench of this Court vide Order dated 2/12/2016 in Criminal Misc. Application No. 26357 of 2016, and also considering the fact, applicant is having roots in Rajkot District, and also having responsibility towards his family, therefore, his presence can be secured at the time of trial by imposing certain conditions, this Court is of the view that discretion is required to be exercised in favour of the present applicant for regular bail by imposing suitable conditions as the investigation is over and Chargesheet is filed, no there is no possibility of tampering with the evidence.'

9. Thus, as discussed hereinabove and taking into consideration the principle laid by the Hon'ble Supreme Court and Hon'ble High Court and looking to the entire facts and circumstances of the present case and documents produced by both the sides and considering the nature of present offence, nature of allegations, role attributed to the present applicants/accused, without discussing the evidence in detail, this Court is of the view that discretion is required to be exercised in favour of the applicants/accused to enlarge them on regular bail subject to stringent conditions thus, this Court pass the following final Order:

// ORDER //

1. The Criminal Misc. Application No. 54/2021 is hereby allowed.
2. The applicants/accused – Bhikhubhai @ Bharatbhai Chakubhai Chavda and Rasikbhai Chakubhai Chavda are ordered to be released on bail in connection with the offence registered at C.R. No. 11208056201247/2020 dated 21/8/2020 of Thorala Police Station, Rajkot city for the offences punishable under Section 302, 323, 504, 143, 147, 148, 149, of I. P. C. and Sec. 135 (1) of G. P. Act on executing personal Bond of Rs. 20,000/- (Rupees Twenty Thousand only) each with surety of the like amount to the satisfaction of the Lower Court/Trial Court, subject to following conditions:
 1. The applicants/accused shall not take undue advantage of his liberty or misuse his liberty.
 2. The applicants/accused shall maintain law and order and shall render co-operation to the Investigating Officer in carrying out investigation.
 3. The applicants/accused shall not directly or indirectly make any inducement, threat or promise

to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to the Police Officers or tamper with the evidence.

4. The applicants shall surrender his passport, if any, to the Trial Court and if they have no passport, then shall file affidavit to that effect.
5. The applicants/accused shall not leave Gujarat State without prior permission of Court concerned.
6. The applicants/accused to mark their presence twice at the concerned Police Station on every 1st and 15th day of every English calendar month between 9.00AM and 2.00 PM;
7. The applicants/accused to furnish the present address of his residence to the I.O And also to the Court at the time of execution of the bond and shall not change their residence without prior permission of this Court.
8. The surety of the applicants/accused shall have to produce his photographs at the time of executing the Surety Bond, and these photographs shall not be more than six months' old.
9. In case the Investigation Officer finds that the applicants breaches any of the above conditions,

the Investigating Officer shall be at liberty to pray for cancellation of bail of the applicants- accused herein.

3. Yadi of this order be sent to the concerned Court and Police Station.

Signed and Pronounced in the open Court today on this 21st January, 2021 at Rajkot.

Place: Rajkot.
Date: 21/1/2021

(PINKY MARUTKUMAR TRIVEDI)
I/c. 15th Additional Sessions Judge,
RAJKOT.
CODE No.GJ01600