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EXH.7.

**IN THE COURT OF SESSIONS JUDGE, RAJKOT DISTRICT,
AT : RAJKOT.**

Criminal Misc. Application (for Regular Bail) No.2967/2022.

Devubhai Mohanbhai Jakhaniya,
Hindu, Aged 35 years, Occ. : Labour work,
R/o.Village Bamanbor,
On the slope in the hut,
Taluka Dist.Rajkot.

(At present in District Jail, Rajkot)

::: APPLICANT.

VERSUS

The State

::: OPPONENT.

Appearance :-

Mr. A. N. Boricha, Ld. Adv. for the applicant.

Mr. T. S. Mathur, Ld. A.P.P. for the opponent – State.

Mr.A. N. Trivedi, Ld. Adv. for the original complainant,

Application U/s. 439 of the Code of Criminal Procedure.

:: J U D G M E N T ::

- 1] The applicant-herein who came to be arrested by Airport Police Station, Rajkot for the offence alleged to have been committed under Sec.302 and 323 of IPC and under Sec.135 of the G.P. Act registered vide C.R.No.11208 05822 0053/2022, has preferred the present bail application under Sec.439 of Cr.P.C. praying for regular bail. The investigation being over charge sheet has been filed, which is numbered as Sessions Case No.85/2022, which is pending before this court. The previous bail application preferred vide CRMA No.1551/2022 after filing of charge sheet was rejected by this court. This is a successive bail application.

- 2] The applicant by way of his application has stated that, he is innocent and does not know anything about the offence. He has been wrongly arraigned as the accused. He has responsibility of his family. Since there is change in circumstances, the present application has been preferred. He would abide by all the conditions that the court would impose. He would neither tamper with the evidence nor threaten the witnesses. He would abide by all the conditions that the court would impose. He has not played any role in the offence. If he is not enlarged on bail, it would

amount to his pretrial punishment. Hence, he has urged the court to allow this application.

- 3] Heard Ld. Adv. Mr.A. N. Boricha for the applicant, who has argued at length. He has reiterated the averments of the application. He has taken the court through the statements of witnesses. He has further submitted that, though the alleged incident had occurred between 9.00 p.m. and 11.00 p.m. on 18/02/2022, however, the original complainant was informed after half an hour. The inquest panchnama does not mention the name of the applicant-accused. There is no fracture of skull. The P. M. Report does not reflect any head injuries or body injuries. The iron rod used in the offence has not been recovered. The original complainant and the accused are relatives. The original complainant does not object if bail is granted to the applicant. Hence, this bail application should be allowed and the applicant be enlarged on bail, subject to necessary conditions.
- 4] Ld. Adv. Mr.A. N. Trivedi, for the original complainant has submitted an affidavit of the original complainant vide Mark 5/1 wherein he has stated that, the applicant is his brother-in-law and a compromise has been arrived at, between them and if the accused is granted bail, he does not have any objection.

- 5] Heard Ld. A. P.P. Mr.T. S. Mathur for the opponent-State, who has stated that, the applicant and the deceased are husband and wife. This is a successive bail application after filing of charge sheet and there is no change of circumstances. The applicant was suspicious about his wife's character. The applicant's mother Rambhiben is an eye witness to the incident. She has mentioned in her statement that, the applicant had assaulted his wife and had continuously beaten her till he was tired. The applicant had assaulted his wife in presence of his minor children. He had assaulted his wife with utmost cruelty. He had also assaulted his in-laws, who had arrived at the scene of offence. There is not only prima facie evidence but, clear and cogent evidence as regards the involvement of the applicant in the crime. The compromise between the parties should not be considered considering the manner in which the crime was committed. Hence, this bail application should be rejected.
- 6] At the outset as per F.I.R. and charge sheet, the applicant had assaulted his wife Shobhaben with wooden plank and had given her rampant blows all over her body and on her head, to which, she had succumbed. The applicant was suspicious about her character.
- 7] On perusing the charge sheet, the I.O. has recorded the statement

of Rambhiben Mohanbhai, the mother of the applicant, who has clearly stated that, on 18/02/2022 a quarrel had ensued between her son Devu i. e. the applicant and his wife Shobha in her as well as their children's presence. The applicant had continuously beaten Shobha with a wooden plank, till he himself was exhausted. Shobha had fallen down and thereafter, had succumbed to her injuries. Rambhiben has further narrated in her statement that, the applicant's son Dinesh had informed his maternal uncle, who along with his brother Vikram, mother Hiruben and other 02 persons namely, Rahul and Hasuben had come there. At that time, the applicant had started beating these 05 people also with wooden plank.

- 8] The I.O. has also recorded the statement of the applicant's minor son Dinesh, who too was present at the scene of incident and he has narrated the facts in consonance with the facts narrated by Rambhiben. Hence, there is clear and ample evidence about the applicant having committed cold-blooded murder of his wife in presence of his own family members. The lacuna which Mr.Boricha has pointed out as regards injuries inflicted upon the deceased, would be matters of evidence at the time of trial and the same would not have any bearing so far as the bail application is

concerned. So also, the court at this juncture would not like to accept the fact about compromise having reached between the parties. The previous application was preferred after filing of charge sheet, hence, there are no new or fresh or change circumstances to prefer this application. This court is unable to overlook the manner in which the applicant had committed the gruesome murder of his wife. In the event, the following final order.

:: ORDER ::

- 1] Criminal Misc. Application (for Regular Bail) No.2967/2022 is hereby rejected.

Pronounced in open court today on this 9th day of November,2022.

Place : Rajkot.
Date : 09.11.2022.

EA-MNG.

(UTKARSH THAKORBHAI DESAI)

Sessions Judge,
R A J K O T.
Code No.GJ-01314.