

Received on : 18/10/2022

Registered on : 18/10/2022

Decided on : 21/10/2022

Duration: 03 Days.

**IN THE COURT OF DISTRICT & SESSIONS JUDGE,
AT JUNAGADH**

CRIMINAL MISC.APPLICATION NO.608 OF 2022

Exh.: _____

APPLICANT/ACCUSED:

Bharat Premjibhai Dalsaniya,
Aged about: 30 years,
Occupation: Labour,
R/o.Majevadi Tal.Dist.Junagadh.

At present:
District Jail,
Junagadh.

Versus

OPPONENT:

The State of Gujarat,
Summons Through: The Public Prosecutor,
Junagadh.

APPEARANCES:

Mr.B.K.Sandh, L.A. for the applicant.
Mr.N.K.Purohit, Ld.P.P. for the State

**BAIL APPLICATION UNDER SECTION 439 OF THE
CODE OF CRIMINAL PROCEDURE**

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

1. By way of the present application preferred

(Rohen K. Chudawala)
Sessions Judge
Junagadh

under **Section 439** of the Code of Criminal Procedure Code, 1973, the applicant/accused, **Bharat Premjibhai Dalsaniya**, has prayed to grant regular bail in connection with the offence registered vide **Cr.No.11203025220109/2022**, with **Junagadh Taluka Police Station**, for the offences punishable u/ss.307, 397 (as per FIR), (497 as per Charge-sheet), 325, 506(2), 450, 342, 465, 468, 471, 120(B) of I.P.C.

2. Pursuant to the notice issued upon the opponent-State of Gujarat, the Ld.P.P. Shri N.K.Purohit has appeared and concerned I/c.P.S.I. of Junagadh Taluka Police Station, has filed his affidavit vide Exh.-6 resisting the bail application.
3. Heard Ld.Advocate Shri B.K.Sandh for the applicant/accused and Ld.P.P. Shri N.K.Purohit for the opponent-State. Read the application. Perused the papers produced by the applicant/accused. Also perused the Police papers made available to this Court and affidavit of the I/c.P.S.I.
4. Ld.Advocate Shri B.K.Sandh, for the applicant/accused has courteously submitted

(Rohen K. Chudawala)
Sessions Judge
Junagadh

that the investigation is over and charge-sheet has been filed. He has also submitted that one of the co-accused namely Hajubhai has been enlarged on bail by the Hon'ble High Court of Gujarat vide the order passed in Cr.M.A. No.10057/2022 and another co-accused Dinesh Manibhai Solanki has been enlarged on bail by this Court and thus, he has claimed parity and has submitted that the present applicant/accused be also enlarged on bail. He has thereafter submitted nothing has been recovered from the applicant/accused and complainant has been discharged from the hospital. He has also submitted that the applicant/accused is having no past criminal antecedents and he is ready to comply with all the conditions that may be imposed upon him, if the applicant/accused is enlarged on bail. He has thus urged that the present application be granted.

5. Per contra, Ld.P.P. Shri N.K.Purohit, for the State, has vehemently opposed this application. He has submitted that the earlier bail application moved by the co-accused persons were rejected. He has submitted that in view of the affidavit filed

(Rohen K. Chudawala)
Sessions Judge
Junagadh

by the I/c.P.S.I., necessary orders be passed. However, the fact of discharge of the injured person is not denied.

6. It transpires from Police papers made available to this Court and from the affidavit of the P.S.I. produced at Exh.-6 that the applicant/accused, along with other co-accused persons, is booked under the offences punishable u/ss.307, 397 (as per FIR), (497 as per Charge-sheet), 325, 506(2), 450, 342, 465, 468, 471, 120(B) of I.P.C. Earlier the bail applications moved by the co-accused persons vide Cr.M.A. Nos.86/2022, 98/2022, 296/2022 and 297/2022 were rejected.

6.1 Prima facie it transpires from the affidavit of I/c.P.S.I. that in the night when complainant was all alone in his house, the accused persons had conspired to loot the ornaments and cash rupees from the complainant and accordingly had entered into his house and sat upon the complainant and had given fist blows on his face with the intention to kill him and looted the ornaments and cash amount from his house. It is also stated in the affidavit that the gold ornaments to the tune of Rs.12 lacs, silver

(Rohen K. Chudawala)
Sessions Judge
Junagadh

ornaments to the tune of Rs.10,000/- and cash of Rs.8,50,000/- have been looted by the accused persons. It further transpires from the affidavit of the P.S.I. that the applicant/accused is not having criminal antecedents. It further transpires that Sessions Case No.31/2022 is pending for trial before this Court.

6.2 It further transpires that one of the co-accused persons namely Hajuben @ Rajiya W/o.Yunushsha Oshmanasha Shahmadar had earlier preferred Cr.M.A. No.296/2022 before this Court for grant of regular bail which was rejected by this Court vide order dated 20/05/2022. The said accused had later on moved the Hon'ble High Court of Gujarat by way of filing Cr.M.A. No.10057/2022 for grant of regular bail and the said application came to be allowed by the Hon'ble High Court of Gujarat vide its order dated 23/09/2022. The role attributed to the said co-accused is that she had broken the lock of second room and had stolen Golden Ornaments worth Rs.12,00,000/- (40 Tolas), 200 Grams Silver Ornaments and cash worth Rs.8,50,000/- of the complainant. Later on the one another co-accused namely Dinesh Manibhai Solanki had moved Cr.M.A. No.575/2022 which was allowed

(Rohen K. Chudawala)
Sessions Judge
Junagadh

by this Court by order dated 15/10/2022. It is pertinent to note that the charge u/s.120(B) of I.P.C. along with other sections is levelled against all the accused persons for criminal conspiracy. Here in the case on hand, all the accused persons, in connivance with each other, looted the complainant.

6.3 Considering the role attributed to the applicant/accused vis-a-vis the role attributed to the co-accused person who have been enlarged on bail by the Hon'ble High Court of Gujarat and by this Court, this Court does not find any reason to deviate from the rule of parity.

6.4 This Court is quite conversant with the ratio laid down by the Hon'ble High Court of Gujarat in the case of **Rameshbhai Batubhai Dhabhi**. In view of the same, while considering the nature and seriousness of the offences coupled with the fact that two of the co-accused persons have already been enlarged on bail, considering the fact that the applicant/accused is not having any past criminal antecedents, considering the fact

(Rohen K. Chudawala)
Sessions Judge
Junagadh

that investigation is over and charge-sheet has already been filed, considering the ratio laid down by the Hon'ble High Court of Gujarat in the case of **Rameshbhai Batubhai Dhabhi** and considering the ratio laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra Vs. C.B.I. and Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.** I am inclined to enlarge the applicant/accused on bail by exercising my judicial discretion in favour of the applicant/accused. The P.S.I., in his affidavit, has expressed certain apprehensions to the extent that if enlarged on bail, the applicant/accused would commit similar offences and would pressurize the complainant and witnesses. However, same can be taken care of by imposing stringent conditions upon the applicant/accused. Hence, the following final order is passed:

-: ORDER :-

- (1) The application is hereby **ALLOWED**.
- (2) The applicant/accused namely **Bharat Premjibhai Dalsaniya** is ordered to be released on bail in connection with the offence registered vide **Cr.No.11203025220109/2022**, with **Junagadh Taluka Police Station**, for the offences

(Rohen K. Chudawala)
Sessions Judge
Junagadh

punishable u/ss.307, 397 (as per FIR), (497 as per Charge-sheet), 325, 506(2), 450, 342, 465, 468, 471, 120(B) of I.P.C., on furnishing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand Only) and one surety of the like amount to the satisfaction of this Court and subject to the conditions that-

1. He shall fully co-operate in the Trial by regularly remaining present.
2. He shall deposit his passport with this Court within seven days. If he does not possess passport, then he shall pass the pursis to that effect.
3. He shall not leave the territorial limits of State of Gujarat, without the prior permission of the Court.
4. He shall furnish his residential address with authenticated proof before this Court at the time of execution of the bond and shall not change the address without prior permission of this Court.
5. He shall not take undue advantage or abuse the liberty.
6. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade them from disclos-

(Rohen K. Chudawala)
Sessions Judge
Junagadh

ing such facts to the Court or any Police Officer or tamper with the evidence.

7. He shall not in any manner be injurious to the interest of prosecution.

8. He shall maintain peace and Law and order and shall not commit offence similar to the offence of which he is accused or suspected.

9. If breach of any of the above conditions is committed, this Court shall be at liberty to take appropriate action against the applicant.

10. The bail bonds shall be executed before this Court.

(3) The concerned authorities will release the applicant only if he is not required in connection with any other offence for the time being.

(4) Yadi of this order be sent to the concerned Police Station.

Signed and pronounced in the open Court on this 21st day of October, 2022.

Date: 21/10/2022

Place: Junagadh

(ROHEN K. CHUDAWALA)
District & Sessions Judge
Junagadh
UIC No. GJ01317

(Rohen K. Chudawala)
Sessions Judge
Junagadh