

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER
CHARGESHEET) NO. 16683 of 2024**

=====

VEJIBEN W/O. VALJI CHAD

Versus

STATE OF GUJARAT

=====

Appearance:

MR JAL UNWALLA, SENIOR ADVOCATE WITH MR DARSHAN M

VARANDANI(7357) for the Applicant(s) No. 1

MR SOAHAM JOSHI, APP for the Respondent(s) No. 1

=====

CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**Date : 05/09/2024****CAV ORDER**

1. Rule. Learned APP waives service of notice of Rule for and on behalf of respondent – State.

2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with **C.R.No.11205047230409 of 2023 registered with Pragpar Police Station, Kachchh West Bhuj**, for the offence punishable under Sections 302, 427, 120B, 201 and 34 of the Indian Penal Code.

3. Learned Senior Advocate Mr. Jal Unwalla assisted by learned advocate Mr. Darshan M. Varandani, appearing on behalf of the applicant, submits that considering the nature of the offence, the applicant

may be enlarged on regular bail by imposing suitable conditions. It is submitted that applicant is a lady accused and she is arrested on 30.10.2023 and since then she is in judicial custody. It is further submitted that investigation is already concluded and present application is filed after submission of charge-sheet. Learned Senior Advocate Mr. Unwalla further submits that FIR is filed against total 4 accused persons and thereafter during the course of investigation names of other co-accused were revealed and therefore at the end of the day the investigating officer has filed charge-sheet against total 9 accused persons. The other co-accused persons whose role is identically similar and near to the role of the present applicant accused have already been considered by this Court. Therefore, considering the principle of law of parity, bail application of the applicant may be entertained. He further submits that admittedly at the time of occurrence of incident present applicant was not found available at the place of occurrence along with co-accused and deceased. Therefore, there was no specific overt act attributed to the present applicant accused at the time of commission of crime. He further submits that applicant is a lady accused and she is in judicial custody since the day of her arrest i.e. 30.10.2023 and almost more than 10 months' period have been passed by. So far as the role attributed to the present applicant accused is concerned, learned Senior Advocate Mr. Unwalla submits that if the Court

would make cursory glance upon the allegations levelled against the applicant in the FIR, in that event, it would be found out that motive was attributed to the present applicant and on that basis statements of the witnesses were recorded. But, in fact no iota of evidence about the overt act attributed to the present applicant accused at the time of commission of crime has come on record. He has read the statements of the witnesses and submitted that as per the case of the prosecution, conspiracy was hatched by the accused persons and at the relevant point of time applicant was available along with other accused persons and those co-accused persons who were present in the meeting at the time of hatching the conspiracy have already been enlarged on bail. Therefore, the role of the present applicant accused can be put at par and on equal pedestal with the role of the other co-accused persons who have already been enlarged on bail. Learned Senior Advocate Mr. Unwalla further submits that in fact there are total five offences registered against the applicant accused, out of which in two offences she has been acquitted by the concerned Court, whereas in one case, cross complaint has been filed and applicant has been released on anticipatory bail and one case is still pending. In another case, applicant is convicted by the competent Court and said order is challenged before the Appellate Court and ultimately the applicant is released by the Appellate Court by suspending the said order. Mr. Unwalla further

submits that similarly situated persons who have five antecedents and co-accused in those cases have already been considered by this Court. He, therefore, urges that present applicant may be released on bail by imposing suitable terms and conditions.

4. Learned APP Mr. Soaham Joshi appearing on behalf of the respondent-State has objected present application with vehemence and submitted that present applicant accused is a kingpin and from the inception of commission of crime, her involvement is found out. Present applicant is in constant touch with other co-accused persons at the relevant point of time and to connect the applicant in the present offence, the investigating officer has already collected call detail record which clearly goes on to show that present applicant is in constant touch with other co-accused persons. He further submits that during the course of investigation, investigating officer has recorded statement of witnesses under Section 164 of Code of Criminal Procedure. He has read the statement of all those witnesses and submitted that crux of the evidence of those witnesses clearly goes on to show that present applicant accused has actively participated in the commission of crime. The applicant is one of the conspirators and she is the main culprit, who has organized the conspiracy and provided all logistic and moral support to other conspirators for execution of their plan to eliminate the deceased. Therefore, bail application of the

applicant may not be entertained.

5. Learned advocate Mr. Pratik Jasani who appears on behalf of original complainant has objected present application with vehemence and submitted that from the inception of commission of crime, involvement of the present applicant accused is clearly found out. He further submits that in fact the wife of the deceased and daughter of the applicant had fought election of Sarpanch against each other wherein wife of the deceased had lost. Initially both were working against the gang of land mafias and raise their voice against the illegal activities committed by land mafias and also they used to register complaint against the land mafias. He further submits that after getting elected as Sarpanch, daughter of the applicant made hand-in-glove with the land mafias and therefore deceased as a whistle-blower has made number of complaints before various authorities and considering the seriousness of the charges levelled against the accused persons, the daughter of the complainant was suspended from the post of Sarpanch and mining authority has also imposed huge amount of fine upon her, due to which relations of both the parties were strained and therefore present applicant accused has administered threat to the deceased to eliminate him. Learned advocate Mr. Jasani has submitted that statements of the witnesses have already been read by the learned APP and he is adopting the arguments canvassed by

learned APP. He further submits that present applicant accused is a history-sheeter and number of offences are registered against her and she is convicted in one offence. He further submits that he has already produced the photographs of the deceased which clearly goes on to show that deceased was brutally killed by the accused persons, wherein, involvement of the applicant is clearly found out. Therefore, considering the aforesaid factual aspects of the matter, discretionary powers of bail cannot be exercised in favour of the applicant.

6. 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 applicant is a lady accused and she is in jail since 30.10.2023. Investigation is concluded and charge-sheet is filed. Initially, FIR is filed against total 4 accused persons and thereafter during the course of investigation names of other co-accused were revealed and therefore the investigating officer has filed charge-sheet against total 9 accused persons. So far as the role attributed to the present applicant accused is concerned, as per the case of the prosecution, motive is attributed to the present applicant and statements of the witnesses were recorded wherein they had also supported the case of the prosecution.

But, *prima facie*, no iota of evidence about the overt act attributed to the present applicant accused at the time of commission of crime has come on record. It is also found out that applicant was not present at the place of occurrence at the time of commission of crime. As per the case of the prosecution, conspiracy was hatched by the accused persons and at the relevant point of time applicant was available along with other accused persons and those co-accused persons who were present in the meeting at the time of hatching of the conspiracy have already been enlarged on bail. Therefore, the role of the present applicant accused can be put at par and on equal pedestal with other co-accused persons who have already been enlarged on bail. Thus, considering the aforesaid factual aspects as well as on the basis of principle of law of parity, application deserves consideration.

7. 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.

8. 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.

9. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with **C.R.No.11205047230409 of 2023 registered with Pragpar Police Station, Kachchh West Bhuj**, 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 she 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;
- [g] not to enter into Kachchh District till the

conclusion of trial except for marking presence and attending the court proceedings.

10. The authorities will release the applicant only if she 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.

11. 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.

12. The present application stands allowed accordingly. Rule is made absolute. Direct service is permitted.

(DIVYESH A. JOSHI,J)

LAVKUMAR J JANI