IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 21006 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SAMIR J. DAVE Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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NARANSINH AMARSINH BIHOLA
Versus
STATE OF GUJARAT

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Appearance:
MR KISHAN R CHAKWAWALA(9846) for the Applicant(s) No. 1
MR SANJAY PRAJAPATI(3227) for the Respondent(s) No. 1
MR J. K. SHAH, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE SAMIR J. DAVE**

Date : 23/12/2022
ORAL JUDGMENT

1. The applicant, by way of this application filed under Section 439 of the Code of Criminal Procedure, seeks regular bail in connection with the FIR being C.R. No.I-109

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of 2018 registered with Dehgam Police Station, District Gandhinagar, for the offences punishable under Section 302, 307, 506(2) and 114 of the IPC and under section 135 of Gujarat Police Act.

2. Heard learned Mr. Kishan Chakwawala for the applicant and Mr. J. K. Shah, learned APP for the respondent-State.

3. Brief facts leading to filing of present application are that:

3.1 That on 15.10.2018, the accused Kiritsinh Gambhirsinh Bihola came on his bike to inquire about the payment of settlement of some earlier issue. During that time, the same person threatened the original informant by saying that Naransinh Amarsinh Bihola and accused no.2 would kill the original information, if he does not pay the amount by 16.10.2018. During late night of 16.10.2018, the accused came with knives in their hands and started inflicting blows on the brother of the complainant i.e. Rajvirsinh Bhupatsinh Bihola on his stomach. Therefore, other persons, who were present at the spot came to rescue and accordingly, injured Ranvirsinh was taken to

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the hospital at Ahmedabad. In the midst of the way, Ambulance came there and the injured was shifted in the ambulance and admitted in the civil hospital on bed no.51 and his treatment was started. During the course of the treatment, the injured Ranvirsinh was unable to speak anything. Thus, by keeping vendetta of the earlier incident, the said accused persons had assaulted the injured Ranvirsinh and therefore, present FIR is filed.

It is also the case of cross complaints, wherein in respect of the same incident, present applicant had also filed cross FIR against several accused persons including present complainant Alpeshsinh Bhupatsinh Bihola at Dehgam Police Station, Gandhinagar vide C. R. No.I-110/ 2018 for the offence punishable u/s. 307, 323, 143, 147, 148, 149, 504 and 506 of Indian Penal Code.

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4. Learned advocate Mr. Kishan R. Chakwawala for the applicant submitted that the applicant is absolutely innocent and has been falsely implicated in the alleged offence. Applicant has not committed any alleged offence. Applicant has no any criminal antecedents. Applicant will

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not flee from justice. Applicant will not hamper or tamper with evidence, witnesses and complainant. Applicant will remain present during the trial before the Court in the alleged offence. Charge-sheet has been filed in the alleged offence. He also submitted that the dispute between the parties has been resolved amicably and the original complainant do not wish to proceed further with the criminal proceedings as lodged by him against the applicant. He also submitted that the story narrated in the FIR is not supported by the witnesses in respect of initiation of incident and manner in which it had occurred and subsequently even a final report i.e. A summary report has also been filed which completely disbelieved the version of the prosecution qua accused no.3 and thus, the entire version of the complainant becomes doubtful and incredible. He also submitted that in light of the report submitted by the Investigating Officer that no witnesses directly attributes any role of aggressor to the present applicant and majorly the witnesses are either common family members and hearsay witnesses and interested witnesses and therefore, the credibility and ingenuity of

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the witnesses is doubtful and not believable. Hence, he has requested to release the applicant on bail. In support of his submissions, learned Advocate Mr. Chakwawala has referred to and relied upon decisions of the Hon'ble Supreme Court in the case of **Jai Dev vs. State of Punjab, AIR 1963 SC 612, Prahlad Singh Bhati vs. N.C.T. Delhi and Anr., State of Kerala Vs. Raneef, Stalin Vs. The State Through Representative by the Inspector.**

5. Opposing the bail application, learned APP Mr. J. K. Shah for the State contended that there is sufficient evidence against the applicant to prove his involvement in the alleged offence. He strongly opposes the bail application looking to the nature and gravity of the offence. In such circumstances, considering the seriousness of the offence and manner in which he executed the alleged offence, no case is made out for exercising discretion in favour of the applicant.

6. On the other hand, learned Advocate Mr. Sanjay Prajapati appearing for the original complainant submitted that the

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parties to the conflict have decided to let go and forego as the applicant and complainant have thereby amicably solved and settled the issue at hand with due diligence and therefore, as the issue is settled amicably and mutually in the interest of both the parties and for entire village community. He also submitted that the original complainant has no objection if the present applicant is enlarged on bail.

7. Heard learned Advocate for the parties and on perused the FIR and charge-sheet papers. In the impugned FIR, it is averred by the complainant that the accused Kiritsinh Gambhirsinh Bihola came on his bike to inquire about the payment of settlement of some earlier issue. During that time, the same person threatened the original informant by saying that Naransinh Amarsinh Bihola and accused no.2 would kill the original information, if he does not pay the amount by 16.10.2018. During late night of 16.10.2018, the accused came with knives in their hands and started inflicting blows on the brother of the complainant i.e. Rajvirsinh Bhupatsinh Bihola on his

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stomach. Therefore, other persons, who were present at the spot came to rescue and accordingly, injured Ranvirsinh was taken to the hospital at Ahmedabad. In the midst of the way, Ambulance came there and the injured was shifted in the ambulance and admitted in the civil hospital on bed no.51 and his treatment was started. During the course of the treatment, the injured Ranvirsinh was unable to speak anything. Thus, by keeping vendetta of the earlier incident, the said accused persons had assaulted the injured Ranvirsinh and therefore, present FIR is filed.

8. It is well settled that though the power to grant bail under section 439 of the Cr.P.C is discretionary, such discretion has to be exercised judiciously, as held by the Hon'ble Supreme Court in **Ram Govind Upadhyay Vs. Sudarshan Singh and Ors. reported in (2002) 3 SCC 598** has observed that:-

> "3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the

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matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

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9. In case of **Prasanta Kumar Sarkar v. Ashis Chatterjee and Anr. reported in (2010) 14 SCC 496**, the Hon'ble Supreme Court has laid down the following principles for examining the correctness of orders granting bail to an accused:-

> "9. ...It is trite that this Court does not, normally, interfere with an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:
>
> (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
>
> (ii) nature and gravity of the accusation;
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> (iii) severity of the punishment in the event of conviction;
> (iv) danger of the accused absconding or fleeing, if released on bail;
>
> (v) character, behaviour, means, position and standing of the accused;
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> (vi) likelihood of the offence being repeated;
>
> (vii) reasonable apprehension of the witnesses being

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influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non- application of mind, rendering it to be illegal."

10. The Hon'ble Supreme Court in the case of **Mahipal v. Rajesh Kumar and Anr. reported in (2020) 2 SCC 118**, held that:-

"14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the

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> record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding."

11. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

12. In the case of **P. Chidambaram vs. Directorate of Enforcement reported in (2020) 13 SCC 791,** the Hon'ble Supreme Court has held as under:-

> "23. Thus, from cumulative perusal of the judgments

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> cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case- to-case basis on the facts involved therein and securing the presence of the accused to stand trial."

13. In view of the above, it appears that the applicant accused has played important role in commission of alleged

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offence. There is possibility that if the applicant accused is released on regular bail then applicant-accused will not remain present before the Court during trial in the alleged offence and at this stage, even the accused is in the jail relatives or friends have tried to convince the complainant and witnesses to settle the issues. At this stage, it is important to note here that looking to the affidavit filed by the original complainant, it appears that the complainant has stated on oath that the matter is amicably settled between the parties and if the applicant is released on bail he has no objection. Such a practice is unwarranted and it amounts to hampering/ tempering with the evidence or witnesses, when such a serious offence of murder is committed. Hence, this Court is of the opinion that such an affidavit on oath filed by the original complainant cannot be considered, looking to the gravity and severity of the offence committed by the accused person.

14. For the foregoing reasons and from the facts and circumstances of the case, it appears that the prosecution has clearly established the prima facie case against the

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present applicant and thus, this Court is not inclined to exercise the powers vested under section 439 of Code of Criminal Procedure Code for releasing the present applicant on bail.

15. Accordingly, present application stands rejected. Rule is discharged.

Sd/-
(SAMIR J. DAVE,J)

MEHUL B. TUVAR

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