

**2023 LiveLaw (SC) 728**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
HIMA KOHLI; J., RAJESH BINDAL; J.**

**22 AUGUST, 2023**

**CRIMINAL APPEAL NO.2495 OF 2023 @ Petition for Special Leave to Appeal (Crl.) No. 3552/2022  
BHARWAD SANTOSHBHAI SONDABHAI *versus* THE STATE OF GUJARAT & ANR.**

**Code of Criminal Procedure, 1973; Section 439 - Bail was allowed by the High Court weighing the fact that the accused has filed a settlement arrived at with the victim's son that too in respect of an offence under Section 302 IPC. The State ought to have approached this Court against the order of bail granted by the High Court but surprisingly, no steps were taken. Accordingly, the impugned order is quashed and accused was directed to surrender forthwith before the trial Court. A copy of this order forwarded to the Secretary (Home), Government of Gujarat for his perusal and appropriate action. (Para 7 – 12)**

(Arising out of impugned final judgment and order dated 18.02.2022 in R/Criminal Misc. Application No.23194/2021 passed by the High Court of Gujarat at Ahmedabad)

For Appellant(s) Mr. Somesh Chandra Jha, AOR Mr. Kuldipsinh Jadeja, Adv. Mr. Pyoli, Adv. Mr. Mayank Gautam, Adv. For Respondent(s) Mr. Sunil Prakash Sharma, AOR Mr. Kumar Deepraj, Adv. Mr. Raju Sonkar, Adv. Ms. Ruchi Kohli, Adv. Ms. Swati Ghildiyal, AOR Ms. Devyani Bhatt, Adv. Ms. Srishti Mishra, Adv.

**ORDER**

1. Leave granted.
2. The present appeal by way of special leave has been filed by the complainant who is aggrieved by the order dated 18<sup>th</sup> February, 2022, passed by the learned Single Judge of the High Court of Gujarat at Ahmedabad in a Criminal Miscellaneous Application<sup>1</sup> filed by the respondent No.2 under Section 439 of the Code of Criminal Procedure, 1973<sup>2</sup>, granting him regular bail in connection with FIR No.I-CR No.11216008210400/2021<sup>3</sup>, for the offence under Sections 302 and 114 of the Indian Penal Code, 1860<sup>4</sup> read with Section 30 of the Arms Act and Section 135 of the Gujarat Police Act.
3. The incident in question took place in the late hours of 17<sup>th</sup> September, 2021, when as per the complainant, respondent No.2 (accused No.2) along with accused No.1 were seated together at the farm of the victim, namely, Parvinbhai and they had got into a heated argument. In the course of the said argument, on the exhortation of the respondent No.2 (accused No.2), accused No. 1 took out a revolver and fired at the victim. The allegation is that the respondent No.2 hit the deceased victim with a sword. Thereafter, they fled away from the spot in a black coloured Mercedes car. It is the case of the prosecution that the accused returned to the scene of the crime and when confronted by the appellant herein, slapped him and dragged him in their moving car due to which he suffered injuries on the head and the waist. Both the appellant and Pravinbhai were rushed to the hospital where Pravinbhai succumbed to his injuries.

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<sup>1</sup> Crl. Misc. Application No.23194/2021

<sup>2</sup> for short 'the Cr.P.C.'

<sup>3</sup> registered with Gandhinagar Sector-7, Police Station, Gandhinagar

<sup>4</sup> in short 'the IPC'

4. Learned counsel for the appellant states that the respondent No.2 had approached the trial Court for seeking regular bail twice. The first application for bail was rejected *vide* order dated 25<sup>th</sup> November, 2021<sup>5</sup>. Even on the second occasion<sup>6</sup>, the trial Court<sup>7</sup> declined to grant any relief to the respondent No.2, keeping in mind the fact that he was facing a charge under Section 302 of the IPC and that the witnesses had identified him during the test identification parade<sup>8</sup>.

5. Dissatisfied by the aforesaid dismissal order, the respondent No.2 approached the High Court and filed an application under Section 439 Cr.P.C. The learned Single Judge has enumerated the aspects that were considered by the Court for allowing the application moved by the respondent No.2, in para 5 of the impugned order which is extracted as below: -

“5. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers. Following aspects are considered: -

- I. The FIR is registered on 18.09.2021 for the offence which is alleged to have taken place on 17.09.2021.
- II. The applicant is in jail since 23.09.2021.
- III. The investigation is concluded and charge-sheet is filed.
- IV. The applicant is also filled on the strength of the settlement now arrived at.
- V. Learned advocate Ms. Shweta Dave appearing for the original complainant draws attention of this Court to the affidavit of the original complainant to indicate the settlement.
- VI. Considering the manner in which the incident has taken place where the applicant and the deceased alongwith their other friends had got together and there was a scuffle which resulted into the present incident.
- VII. Submission of learned advocate for the applicant that it was the deceased who had first drawn the sword and the applicant had tried to snatch away the sword from the deceased.
- VIII. Learned advocate for the applicant states that there are no antecedents against the applicant.
- IX. Learned APP under instructions of IO is unable to bring on record any special circumstances against the applicant.”

6. Based on the above consideration, the application filed by the respondent No.2 was allowed by the High Court and bail was granted to him, subject to imposition of certain conditions.

7. Strangely enough one of the considerations that has weighed with the learned Single Judge includes the fact that the respondent No. 2 has filed a settlement arrived at with the original complainant<sup>9</sup> and the affidavit of the original complainant confirmed the said settlement, that too in respect of an offence under Section 302 of the IPC. Another consideration that has been taken into consideration by the High Court is the fact that there were no adverse antecedents of the respondent No.2. To top it all, learned Additional Public Prosecutor<sup>10</sup> made a submission before the High Court that the State was unable to bring on record any special circumstances against the respondent No.2.

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<sup>5</sup> Cr. M.A. No.1680/2021

<sup>6</sup> Criminal Misc. Application No. 1763 of 2021 dt. 17.12.2021

<sup>7</sup> Court of Principal Sessions Judge at Gandhinagar

<sup>8</sup> For short 'the TIP'

<sup>9</sup> son of the deceased victim

<sup>10</sup> For short 'the A.P.P.'

8. In the present case, after repeated directions, an affidavit has finally been filed by the respondent No.1 – State, listing the criminal antecedents of the respondent No.2 in para 5 which is extracted herein below: -

“5. That the criminal antecedents of the Respondent No. 2 are given herein below:

Sr. No.	DETAILS OF FIRs
1.	FIR No. <b>11216025220323 of 2022</b> registered at Santej Police Station, Gandhinagar u/s 385, 147, 148, 323, 379, 504, 506(2), 511 r/w 120(B) of IPC, 1860
2.	FIR No. <b>11216008210402 of 2021</b> registered u/s 65(A)(A), 66(1)(B) of Gujarat Prohibition Act, 1949 at Sector-7 Police Station, Gandhinagar
3.	FIR No. <b>11192011200478 of 2020</b> registered at Bopal Police Station, Ahmedabad Rural u/s 188 of IPC, 1860 & 113 of Gujarat Police Act.

9. The affidavit of the respondent No.1 – State further states that while on bail in the subject FIR, the respondent No.2 was arrested on 22<sup>nd</sup> August, 2022, in connection with the FIR listed at Serial Number 1 of the tabulated statement extracted hereinabove and he was released on bail *vide* order dated 23<sup>rd</sup> August, 2022.

10. Learned counsel for the appellant has expressed an apprehension that if the respondent No.2 remains on bail, there is every likelihood of his tampering with the evidence in the instant case and irrespective of the chargesheet having been filed, he can still indulge in such an activity.

11. Learned counsel for the respondent No.2 opposes the present appeal and states the subsequent FIR registered against his client was in the course of his duty as a Security Officer attached to his employer who has some running dispute with his brother, in which he too got embroiled. This can hardly be a ground to explain registration of another FIR against the respondent No.2 when he was on bail in the FIR, subject matter of the present petition.

12. For the reasons noted above, we are of the firm opinion that the respondent No.2 was not entitled to any relief in the instant case. Respondent No.2 had remained in custody for barely six months (23<sup>rd</sup> September, 2021 to 18<sup>th</sup> February, 2022) before he was released on bail in respect of a serious offence under Section 302 of the IPC. His antecedents also indicate his propensity towards committing crime. Accordingly, the impugned order dated 18<sup>th</sup> February, 2022, is quashed and set aside and respondent No.2 is directed to surrender forthwith before the trial Court.

12. To our mind, this was a fit case where the respondent No.1 – State ought to have approached this Court against the order of bail granted by the High Court in favour of the respondent No.2 but surprisingly, no steps were taken. A copy of this order shall be forwarded by learned counsel for the respondent No. 1-State to the Secretary (Home), Government of Gujarat for his perusal and appropriate action.

13. The appeal is allowed and disposed of on the aforesaid terms.

14. Needless to state that if the respondent No.2 files a fresh application for bail at a later stage, on the basis of any new facts and circumstances that may arise, the same shall be considered and decided in accordance with law.