

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL MISC.APPLICATION NO. 4373 of 2024
(FOR REGULAR BAIL - AFTER CHARGESHEET)**

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PARAKRAMSINH HATHUBHA @ HATHISINH JADEJA
Versus
STATE OF GUJARAT
=====

Appearance:

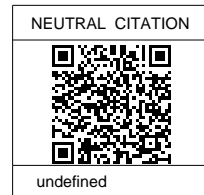
MR ASHISH M DAGLI(2203) for the Applicant(s) No. 1
MR PP MAJMUDAR(5284) for the Respondent(s) No. 1
MR LB DABHI APP for the Respondent(s) No. 1
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CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

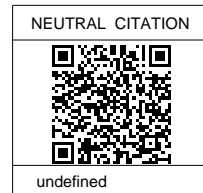
Date : 18/03/2024

ORAL ORDER

1. Rule. Learned APP waives service of notice of rule for respondent – State of Gujarat.
2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the FIR being C.R. No.11993004230579/2023 registered with the Bhachau Police Station, Kachchh-East-Gandhidham for the offence punishable under Sections 306 and 114 of the Indian Penal Code.
3. Learned advocate for the applicant submitted that the so-called incident has taken place on 09.08.2023, for which, FIR has been lodged on the very next day i.e. on 10.08.2023 and the applicant has been arrested in connection with the same on 27.08.2023 and since then, he is in judicial custody. Learned advocate submitted that now the

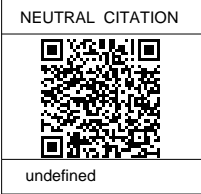


investigation is completed and after submission of the chargesheet, the present application is preferred. Learned advocate submitted that FIR has been lodged against two accused persons and out of which, the accused no.2 has already been considered by this Court. Learned advocate submitted that it is alleged against the present applicant that there was dispute with regard to ancestral property going on between the present applicant and his brother and the deceased was working as Watchman in the premises of the brother of the applicant and as per the case of the prosecution, the brother of the present applicant had filed one affidavit, wherein the deceased was shown as witness and as soon as the said fact came to the notice of the present applicant, he approached the deceased and administered threats to him to retract from earlier statement by filing another affidavit, otherwise, he would have to face dire consequences, due to which, the deceased stopped from going to the office but after certain period of time, the deceased mustered courage to go to his work. Learned advocate submitted that if the allegations leveled against the present applicant are to be considered as true and correct for the sake of arguments without admitting it, in that event, by no stretch of imagination, it can be said that the present applicant has aided and instigated the deceased to commit suicide and, hence, the ingredients of Section 107 of the IPC

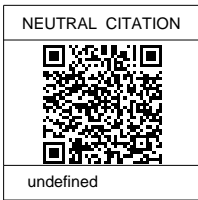


are not at all attracted. It is, therefore, urged that considering above facts of the case as also considering the principle of law of parity, the applicant may be enlarged on regular bail by imposing suitable conditions.

4. Learned APP for the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. Learned APP submitted that name and role of the present applicant is clearly stated in the FIR. Learned APP submitted that before committing suicide, the deceased has written a suicide note, wherein name of the present applicant is stated by narrating the fact that at the instance of the threats administered by the present applicant, he is going to commit suicide and the said suicide note was sent to FSL and it is found out from the report of the FSL that the handwriting upon the suicide note is found to be of deceased. Learned APP further submitted that the role of the co-accused (father-in-law of the present applicant), who has been granted bail, is different than the present applicant and he is residing in different village, which is far away distance place and so far as his role is concerned, it is alleged that he had administered threats to the deceased through phone and thus, the role of the said co-accused is different than the present applicant – accused. It is, therefore, urged that the present application may not be entertained.

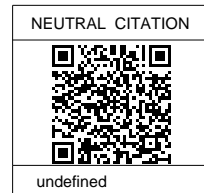


5. Learned advocate, Mr. Majmudar appearing for the original complainant has also opposed the present bail application with a vehemence and submitted that the present applicant is very head strong person and so-called incident occurred on 09.08.2023 and just three days before the said incident i.e. on 06.08.2023, one application in the form of complaint was given to PI, Bhachau Police Station specifically stating that the present applicant had gone to the office of the deceased and administered threats and not only that, he has also tried to eliminate the deceased by running his car upon him but fortunately, the deceased escaped from the said attack. Learned advocate submitted that the said application in the form of complaint is annexed with the affidavit, which clearly goes on to show that there was proximate cause on the part of the deceased to commit suicide as there was constant threats administered by the present applicant – accused. It is, therefore, urged that considering the above facts, discretion may not be exercised in favour of the present applicant – accused.
6. In rejoinder, learned advocate, Mr. Dagli submitted that the said application was not given by the deceased but the application in the form of complaint was given by one Jagdishbhai, however to connect the present applicant with the commission of crime, the statement of said Jagdishbhai has not been recorded by the concerned IO during the



course of investigation.

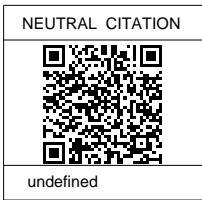
7. Learned advocates appearing on behalf of the respective parties do not press for further reasoned order.
8. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers of the investigation and considered the allegations levelled against the applicant and the role played by the applicant. It is found out from the record that the present application is preferred after submission of the chargesheet and now the investigation is completed and the applicant is in jail since 27.08.2023. Section 107 of the IPC takes into consideration the instigation by any person to do an act, instigate - means to goad or urge forward to provoke, incite, urge or encourage to do an act. Merely the accused asked the deceased to retract his version by filing another affidavit, would not in any manner be considered as an act to instigate, incite or provoking the deceased to commit suicide and if there was any threats and/or pressure upon the deceased to do a particular act, he could have taken appropriate recourse. The contents of the FIR indicate that the accused alleged to have goaded the deceased to make an affidavit denying his signature in a particular document, but had never intended or instigated the deceased to commit suicide.
9. At this stage, this Court would like to put



reliance upon the decision of the Hon'ble Supreme Court in the case of **M. Mohan Vs. State Represented by the Deputy Superintendent of Police**, reported in **AIR 2011 SC 1238**, wherein the Hon'ble Supreme Court has made the following observations regarding the ingredients of Section 306 IPC, referring to the word 'suicide', which reads thus:

"If the provisions for the offence under Section 306 are considered, it is evident that the basic ingredient regarding the intentional instigation are required to be proved or established. The word 'suicide' has not been defined. The word 'suicide' would mean the intentional killing of oneself. As per Concise Oxford Dictionary, 9th Edition, p.686, "A finding of suicide must be on evidence of intention. Every act of self destruction is, in common language described by the word 'suicide' provided it is an intentional act of a party knowing the probable consequence of what he is about. Suicide is never to be presumed. Intention is the essential legal ingredient."

10. 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.
11. 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* and taking into consideration the ratio enunciate by the Hon'ble Apex Court in the aforesaid decisions, this Court is inclined to grant bail to the applicant-accused.

12. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.11993004230579/2023 registered with the Bhachau Police Station, Kachchh-East-Gandhidham 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 he 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 concerned court within a week;
 - [d] not leave the State of Gujarat without prior permission of the concerned court;
 - [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;

13. The authorities will release the applicant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the concerned 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.
14. 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.
15. Rule is made absolute to the aforesaid extent. Direct service is permitted.

Sd/-
(DIVYESH A. JOSHI, J.)

Gautam