

2023 SCC OnLine Guj 2725

In the High Court of Gujarat at Ahmedabad
(BEFORE HASMUKH D. SUTHAR, J.)

Manish Champaklal Mehta

Versus

State of Gujarat

R/Criminal Misc. Application No. 15013 of 2023

Decided on August 29, 2023

Advocates who appeared in this case:

Mr. Yatin Oza, Sr. Advocate with Mr. Anurag R. Rathor(9315) for the Applicant(s) No. 1

Mr. Hardik Mehta, Addl. Public Prosecutor for the Respondent(s) No. 1

The Order of the Court was delivered by

HASMUKH D. SUTHAR, J.:— By way of the present application under Section 438 of the Criminal Procedure Code, 1973, the applicant accused has prayed to release him on anticipatory bail in the event of his arrest in connection with the FIR being C.R. No. 11205043221038 of 2022 registered with 'B' Division Police Station, Kachchh (East), Bhuj for the offences punishable under Sections 387, 120(B), 34, 389 and 201 of the Penal Code, 1860, 1860.

2. Learned Senior Counsel Mr. Yatin Oza assisted by learned advocate Mr. Anurag Rathor for the applicant submits that the present applicant is falsely enroped in the alleged offence. Even if the allegations leveled in the FIR are accepted on the face of it then also the only role which is attributed to the present applicant is that the applicant provided the platform and facilitated contact with one Rameshbhai Joshi and thus, the only role attributed is that applicant is the mediator and only on the basis of conversation, present applicant is made accused. Further, when the complaint was filed, at that time, his statement was recorded and no allegation leveled against him and it is only subsequently that the present applicant is implicated. Further, he stated that the nature of allegations are such for which custodial interrogation at this stage is not necessary. Besides, the applicant is readily available during the course of investigation and will not fee from justice. Further, he stated that accused having played similar role is considered by the coordinate Bench of this Court and thus, on the ground of parity he has requested to allow the present application.

3. Learned Senior Counsel for the applicant, on instructions, states

that the applicant is ready and willing to abide by all the conditions including imposition of conditions with regard to powers of Investigating Agency to file an application before the competent Court for his remand. He would further submit that upon filing of such application by the Investigating Agency, the right of applicant accused to oppose such application on merits may be kept open.

4. Learned Additional Public Prosecutor appearing on behalf of the respondent - State has opposed grant of anticipatory bail looking to the nature and gravity of the offence. Further, he has stated that applicant is actively involved in the offence and he was in active contact and he has played active role in hatching the conspiracy and therefore, custodial interrogation of the applicant for thorough investigation is required and hence, has requested to dismiss the present application.

5. Learned advocate Mr. Kakkad appearing for the original complainant adopted the arguments of the learned APP and stated that considering the constant touch of the present applicant with the accused persons prior to and after commission of crime and the role attributed to the present applicant and as the applicant-accused is a key person who facilitated the co-accused person in the commission of crime, custodial interrogation of the applicant is required. Further, the applicant has remained absconding since last 10 months and hence, he has requested to dismiss the present application.

6. Having heard the learned advocates for the parties and perusing the investigation papers, it is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon'ble Apex 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; (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; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided. I have considered the following aspects.

- (1) The only role attributed to present applicant-accused is of facilitating conversation of victim with one Shambhubhai Joshi who was at relevant point of time at Bombay;
- (2) Said accused Shambhubhai Joshi who is attributed with similar

role to that of present applicant is considered by the coordinate Bench of this Court;

7. Considering the aforesaid aspects and the law laid down by the Hon'ble Apex Court in the case of *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of *Shri. Gurubaksh Singh Sibbia*, (1980) 2 SCC 665 and also the decision in the case of *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1 and *Ramesh Batukbhai Dabhi v. State of Gujarat*, (2011) 3 GLR 1150 for grant of principle of parity, I am inclined to allow the present application.

8. In the result, the present application is allowed by directing that in the event of applicant herein being arrested in connection with the FIR being C.R. No. 11205043221038 of 2022 registered with 'B' Division Police Station, Kachchh (East), Bhuj, the applicant shall be released on bail on furnishing a personal bond of Rs. 10,000/- (Rupees Ten Thousand Only) with one surety of like amount on the following conditions that he:

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) shall remain present at the concerned Police Station on 13/09/2023 between 11.00 a.m. and 2.00 p.m. and the IO shall ensure that no unnecessary harassment or inconvenience is caused to the applicant;
- (c) 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 him from disclosing such facts to the court or to any police officer;
- (d) shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
- (e) shall at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change his residence till the final disposal of the case till further orders;
- (f) shall not leave India without the permission of the Court and if having passport shall deposit the same before the Trial Court within a week; and
- (g) it would be open to the Investigating Officer to file an application for remand if he considers it proper and just and the learned Magistrate would decide it on merits;

9. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicant. The applicant shall remain present before the learned

Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the learned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police remand. It is clarified that the applicant, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

10. At the trial, the Trial Court shall not be influenced by the *prima facie* observations made by this Court while enlarging the applicant on bail.

11. Rule is made absolute to the aforesaid extent.

12. Application is disposed of accordingly. Direct service is permitted.

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