

2023 SCC OnLine Guj 2753

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

Suryadipsinh Sukhdevsinh Jadeja

Versus

State of Gujarat

R/Criminal Misc. Application No. 15492 of 2023

Decided on September 1, 2023

Advocates who appeared in this case:

Mr. V.A. Zala(11441) for the Applicant(s) No. 1

Mr. L.B. Dabhi App for the Respondent(s) No. 1

The Order of the Court was delivered by

HASMUKH D. SUTHAR, J.:— RULE. Mr. L.B. Dabhi, learned APP waives service of notice of Rule on behalf of the respondent-State.

2. 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. 11211031230220 of 2023 with Limbdi Police Station, Dist. Surendranagar for the offences punishable under Sections 363 of the Penal Code, 1860.

3. Learned advocate for the applicant submits that the complaint came to be lodged at the instance of his maternal grand-son. The dispute took place between daughter of the complainant and his son-in-law on account of which his maternal grandfather lodged the complaint as his nephew [maternal grandson] was residing with him was taken away by the present applicant as the present applicant is biological father of the nephew of the complainant and hence the ingredients of the offence are not made out.

4. Learned advocate further submits that in this regard application for quashing of complaint being Special Criminal Application No. 10050 of 2023 is preferred wherein the coordinate Bench directed the present applicant, who was petitioner before the coordinate Bench, to handover custody of the child aged about 6 years and 3 months to the complainant or the mother of the child on or before 18.08.2023. Learned advocate for the applicant submits that the applicant assailed the said order before the Hon'ble Apex Court by preferring SLP (Criminal) No. 10293 of 2023 wherein the Hon'ble Apex Court vide order dated 21.08.2023 has been pleased to protect the applicant for a period of two weeks and then directed him to approach this Court and

as such the present applicant is before this Court.

5. Learned advocate for the applicant submits that no case is made out against the present applicant and since the applicant is law-abiding citizen and no custodial interrogation is required as during the course of investigation he will not fee away and will be available for interrogation. He, therefore, prays that the applicant may be granted anticipatory bail.

6. 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 and stated that prima facie offence is made out as the coordinate Bench of this Court as well as Hon'ble Apex Court have directed the applicant to handover custody of the child to the complainant or the mother. He, therefore, prays that since prima facie offence is made out considering the severity of punishment of offence, the present application requires to be dismissed.

7. Having heard the learned advocate 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 feeing, 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) there is no dispute that present applicant is biological father of his child;
- (2) father is natural guardian of child and prima facie ingredients of Section 361 of IPC are not attracted,
- (3) no recovery or discovery is required to be made in such case and
- (4) even Hon'ble the Apex Court has, vide its order dated 21.08.2023 passed in SLP (Criminal) No. 10293 of 2023, protected the applicant for a period of two weeks.

8. 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, I am inclined to allow the present application.

9. 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. 11211031230220 of 2023 with Limbdi Police Station, Dist. Surendranagar, 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 20/09/2023 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;

10. 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.

11. 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.

12. Rule is made absolute to the aforesaid extent. Application is disposed of accordingly. Direct service is permitted.

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