

2023 SCC OnLine Guj 2789

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

Jigar Sandipkumar Jain

*Versus*

State of Gujarat

R/Criminal Misc. Application No. 12185 of 2023

Decided on September 2, 2023

Advocates who appeared in this case:

Mr. PK Jani Sr. Advocate with Mr. Archit P Jani(7304) for the Applicant(s) No. 1

Ms. Jemini S Patel(10140) for the Respondent(s) No. 1

Ms. Divyangna Jhala App 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 No. 11191035230355 of 2023 registered with Naroda Police Station, Ahmedabad for the offences punishable under Sections 406, 420, 409, 34 and 120B of the Penal Code, 1860.

2. Learned senior advocate Mr. P.K. Jani for the applicant submits that the present applicant is Chartered Accountant and he has nothing do with an offence. Merely he has done the audit of Parvati Jadav Charitable Trsut Hospital. He submits that due to inter-se dispute of the trustees, the present applicant is enroped in the offence and alleged that applicant has not properly prepared the audit report and gone into accounts and verified the accounts and as such he failed to conduct proper audit which is resulted into misappropriation. Except this no role is attributed to the present applicant and hence he requests to allow the present application as the applicant has performed his professional duty with due utmost care and diligence and the applicant is having no criminal antecedents. Further, he submits that considering the nature of allegations, no custodial interrogation is necessary. Besides, the applicant is available to join the course of investigation and will not fee from justice. In view of the above, the applicant may be granted anticipatory bail.

3. *Per contra*, 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. He has stated that the present applicant has not properly conducted the audit in connivance with the other trustees and prepared the false audit report which caused loss of huge amount to the tune of Rs. 94,97,88,969/-. There is possibility of tampering with an evidence and, therefore, she has requested to dismiss the present application.

4. Learned advocate Ms. Jaimini Patel has also tendered the written objection on behalf of the original complainant which is taken on record. Adopting the same objections and contentions of the learned APP. Further she submits that, in the audit report of the year 2016-2017, the applicant has not noticed any irregularity in connivance with the trustees and as applicant is facing charge of conspiracy, custodial interrogation is required as he has played the active role and only due to his negligence amount being misappropriated. She submits that even books of accounts are also not handed over to the complainant trust and hence custodial interrogation is required. She has requested to dismiss the present application. She also submits that record of the trust is not found and in absence of the said record, trust is unable to take further recourse under the Law.

5. 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 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) present applicant is Chartered Accountant and he has rendered his professional services. Whatever allegations levelled against the applicant are that he has not conducted the audit with due care and diligence which is resulted into misappropriation of an amount and except these there is no any allegation made qua embezzlement of amount or misappropriation of amount qua the present applicant;

- (2) Alleged offence is in connection with the financial transaction and based on the documentary evidence;
- (3) offence is purely based on documentary evidence and offence is not punishable under life or death imprisonment; and
- (4) whatever allegation levelled against the applicant is accepted on face of it, it reveals only the negligence in conducting the accounts of trust.

6. 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, this Court is inclined to allow the present application.

7. In the result, the present application is allowed by directing that in the event of applicant herein being arrested in connection with the FIR No. 11191035230355 of 2023 registered with Naroda Police Station, Ahmedabad, 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 18/09/2023 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;

8. 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.

9. 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.

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

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