

2023 SCC OnLine Guj 3133

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

Kirtalbhai Chaganbhai Rathva

*Versus*

State of Gujarat

R/Criminal Misc. Application No. 15182 of 2023

Decided on September 21, 2023

Advocates who appeared in this case:

OI Pathan(7684) for the Applicant(s) No. 1

Mr. LB Dabhi, APP for the Respondent(s) No. 1

The Order of the Court was delivered by

HASMUKH D. SUTHAR, J.:— RULE. 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. 11184006230452 of 2023 registered with Kwat Police Station, Chhota Udepur, for the offences punishable under Sections 65(e), 65(a) and 116(b) of the Prohibition Act.

3. Learned advocate for the applicant submits that the applicant has been falsely roped in the offence. Nothing is recovered from conscious possession of the applicant. The muddamal article is worth of Rs. 12960/-. The applicant has no past criminal antecedent. He further submitted that the nature of allegations are such for which custodial interrogation at this stage is not necessary. Besides, the applicant is available during the course of investigation and will not fee from justice. In view of the above, the applicant may be granted anticipatory bail.

4. Learned advocate 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.

5. Learned Additional Public Prosecutor appearing on behalf of the respondent - State has opposed grant of anticipatory bail contending

that the prohibited muddamal was recovered from the house of the applicant and therefore, the application may not be considered.

6. 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) The applicant was not found at the spot.
- (2) The allegation levelled against the applicant is that, recovered muddamal was found from the house of the applicant, except this, no any allegation is made against the applicant.
- (3) Nothing is recovered from the possession of the applicant
- (4) The applicant has no past criminal antecedent.

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, 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. 11184006230452 of 2023 registered with Kwat Police Station, Chhota Udepur, 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

30.09.2023 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. Rule is made absolute to the aforesaid extent. Application is disposed of accordingly. Direct service is permitted.