

(2022) 11 GUJ CK 0053

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 4148 Of 2022

Abhishek Ajaybhai Khaitan

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 14-11-2022

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 406, 420, 504, 506(2)
Code Of Criminal Procedure, 1973 — Section 438

Citation : (2022) 11 GUJ CK 0053

Hon'ble Judges : Hemant M. Prachchhak, J

Bench : Single Bench

Advocate : K S Chandrani, Chintan Dave

Final Decision : Allowed

Judgement

Hemant M. Prachchhak, J

1. This is an application by the applicant under Section 438 of the Code of Criminal Procedure, 1973 for anticipatory bail in the event of his arrest in connection with FIR registered at C.R. No.112100552111586 of 2021 before Salabatpura Police Station, Surat for the offence under Sections 406, 420, 504, 506(2) and 120B of the Indian Penal Code.

2. Learned advocate appearing on behalf of the applicant would submit that the transaction between the present applicant and the complainant is a business transaction and the applicant has made timely payment to the complainant in past also. He further submitted that the complainant has also admitted the fact that the applicant has paid some amount to the complainant and for some amount remaining due, there is a dispute and therefore, the present FIR is filed. He further submitted that the applicant had personally remained present before the concerned Investigating Officer as directed by the Co-ordinate Bench of this Court vide order dated 08.03.2022 and his statement is also recorded. He, therefore, submitted that considering the nature of offence, the applicant may be

enlarged on anticipatory bail by imposing suitable conditions.

3. On the other hand, the learned Additional Public Prosecutor appearing for the respondent-State has opposed this application and granting anticipatory bail to the applicant looking to the nature and gravity of the offence.

4. I have heard the learned Advocates appearing for the respective parties and perused the investigation papers and have also taken into consideration the facts of the case, nature of allegations, role attributed to the applicant–accused and without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicant. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors. as reported at [2011] 1 SCC 6941, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitutional Bench in the case of Shri Gurubaksh Singh Sibbia & Ors., as reported at (1980) 2 SCC 665.

5. Following aspects are also considered:-

I. The FIR is registered on 18.09.2021 for the offence which is alleged to have taken place on 12.10.2018 to 03.07.2019.

II. Considering the fact that the applicant is protected against arrest vide order dated 08.03.2022 which has continued from time to time.

III. Considering the fact that there is a business transaction between the applicant and the complainant.

IV. The complainant has also admitted the said fact and the dispute is with regard to the due amount to be paid by the applicant.

V. Learned APP under instructions of IO states that the applicant had personally remained present before the IO and his statement is also recorded.

6. Learned Advocate for the applicant on instructions states that the applicant is ready and willing to abide by all the conditions, including impositions of conditions with regard to the 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.

7. In the result, the present application is allowed by directing that in the event of arrest of the applicant herein in connection with FIR registered at C.R. No.112100552111586 of 2021 before Salabatpura Police Station, Surat, the applicant shall be released on bail on his furnishing a personal bond of Rs.10,000/- (Rupees ten thousands only) with one surety of the like amount on the following conditions that he shall:

(a) shall cooperate with the investigation and make available for interrogation whenever required;

(b) shall remain present at the concerned Police Station on 30.11.2022 between 11.00 AM and 02.00 PM;

(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 from disclosing such facts to the court or to any police officer;

(d) shall not obstruct or hamper the police investigation and shall 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 residence till the final disposal of the case till further orders without the permission of Trial Court;

(f) To mark presence once in month before the concerned Police Station till filing of the charge-sheet;

(g) shall not leave India without the permission of the Trial Court and if having passport, shall deposit the same before the Trial Court within a week; and

(h) 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 the same 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. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if, ultimately, granted, and the power of the learned Magistrate to consider such a request in accordance with law. 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. Rule is made is made absolute.

Direct service is permitted.