

(2021) 02 GUJ CK 0062

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 19056 Of 2020

Ajaybhai Kalubhai Ninama

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 11-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 114, 366, 376(1)

Citation : (2021) 02 GUJ CK 0062

Hon'ble Judges : Rajendra M. Sareen, J

Bench : Single Bench

Advocate : Dharmesh R Patel, JK Shah

Final Decision : Allowed

Judgement

Rajendra M. Sareen, J

[1] The learned advocate for the applicants does not press this application qua applicant No.1.

[2] Hence, present application qua applicant No.1 stands dismissed as not pressed.

[3] By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant No.2 original accused has prayed to

release him on anticipatory bail in case of his arrest in connection with the FIR registered as C.R No.11821008200914 of 2020 before Dahod Rural

Police Station, District: Dahod for the offences under Sections 366, 376(1) and 114 of the Indian Penal Code.

[4] Learned advocate for the applicant No.2 submits that considering the nature of allegations, role attributed to the applicant No.2, the applicant No.2

may be enlarged on anticipatory bail by imposing suitable conditions. He on

instructions also states that the applicant No.2 is ready and willing to abide by all the conditions including imposition of condition with regard to power of investigating agency to file an application before the competent Court for his remand. He has further submitted that upon filing such application by the investigating agency, the right of the applicant No.2- 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 looking to the nature and gravity of the offence.

[6] Heard the learned Advocates for the respective parties through Video Conferencing and perused the papers. Learned advocates appearing on behalf of the respective parties do not invite reasoned order.

[7] Having heard the learned counsel for the parties and perusing the record of the case and taking into consideration the facts of the case, nature of

allegations, role attributed to the applicant No.2 - accused, without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail

to the applicant No.2. This Court has also taken into consideration the law laid down by the Honâ??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 Honâ??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.

[8] In the result, the present application is allowed by directing that in the event of applicant No.2 herein being arrested pursuant to FIR registered as

C.R No.11821008200914 of 2020 before Dahod Rural Police Station, District: Dahod, the applicant No.2 shall be released on bail on furnishing a

personal bond of Rs. 15,000/- (Rupees Fifteen Thousand only) with one surety of like amount on the following conditions that the applicant No.2 shall :

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

(b) remain present at concerned Police Station on 18.02.2021 between 11.00 a.m. and 2.00 p.m.;

(c) 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) 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) 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;

(f) 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 No.2.

The applicant No.2 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

applicants, 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 No.2 on

anticipatory bail.

[11] Rule is made absolute qua applicant No.2. Application qua applicant No.2 is disposed of accordingly. Registry is directed to communicate this

order by FAX or E-mail to the concerned Authority.