

(2022) 07 GUJ CK 0039
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 11331 Of 2022

Amarsinh Jitendrasinh Zala

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 13-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Gujarat Prohibition. Act, 1949 — Section 65(a), 65(c), 81,83, 98(2), 116B
Indian Penal Code, 1860 — Section 279, 427, 465, 468
Motor Vehicles Act, 1988 — Section 177, 184

Citation : (2022) 07 GUJ CK 0039

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Vishvajitsinh D Chauhan, Kishan Prajapati, LB Dabhi

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Learned Advocate Mr. Kishan Prajapati on behalf of the applicants seeks permission to withdraw present application qua applicant no.1-Amarsinh Jitendrasinh Zala. Permission as prayed for is granted Application stands disposed of as withdrawn qua applicant no.1.

2. Insofar as applicant no.2- Rajusinh Vinusinh Zala, this Court has heard learned Advocate Mr. Kishan Prajapati on behalf of the applicant and learned Additional Public Prosecutor Mr. L.B. Dabhi on behalf of the respondent-State.

3. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant – original accused prays for being released on anticipatory bail in connection with FIR No. 11209028220536 of 2022 registered with Khedbrahma Police Station, Sabarkantha on 30.05.2022 for offences punishable under Sections 65(a), 65(c), 81,83, 98(2) and 116-B of the Gujarat Prohibition Act, Sections 279, 427, 465 and 468 of the Indian Penal Code as well

as Sections 177 and 184 of the Motor Vehicles Act.

4. Learned Advocate Mr. Prajapati for the applicant submits that the nature of allegations are such for which custodial interrogation at this stage may not be necessary. Besides, the applicant is available during the course of investigation and will not flee from justice. In view of the above, the applicant may be granted anticipatory bail.

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 Mr. L. B. Dabhi on behalf of respondent-State has opposed the grant of anticipatory bail looking to the nature and gravity of the offence.

6. Heard learned Advocates for the parties, who have not submitted anything else.

7. Considering the submissions made by learned Advocates for the parties and also considering the documents on record as well as the investigation papers, the following aspects are considered by this Court:

[1] That the present applicant is sought to be arraigned only on the statement of co-accused.

[2] That while there is call detail records which show that the applicant was in touch with the co-accused, who was to supply the contraband material in question, it also appears that the applicant and the co-accused, are from the same area and therefore the submission of a personal relations between the parties cannot be ignored at this stage.

[3] Insofar as the antecedent against the present applicant is concerned, the present applicant is arraigned as an accused in one offence, which is also under the provisions of Indian Penal Code and under the provisions of Atrocities Act and whereas there are no offences alleged against the present applicant insofar as the present act is concerned.

8. Having regard to the circumstances in question, and considering the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors. reported in (2011)1 SCC 694, this Court is inclined to consider this application.

9. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR No. 11209028220536 of 2022 registered with Khedbrahma Police Station, Sabarkantha 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:

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

(b) shall remain present at the concerned Police Station on 18.07.2022 between 11:00 a.m. and 2:00 p.m.;

(c) shall mark his presence at the concerned Police Station once in a month for a period of next three months;

(d) 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;

(e) 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;

(f) 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 or till further orders;

(g) shall not leave India without the permission of the Court and, if having passports shall surrender the same before the Trial Court within a week.

10. Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicant to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. 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.

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. Rule is made absolute to the aforesaid extent. Direct service is permitted.