

(2024) 04 GUJ CK 0048
In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Anticipatory Bail) No. 5714 Of 2024

Amitbhai Naginbhai Desai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 15-04-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 114, 120B, 406, 420
Gujarat Protection Interest Of Depositors (In Financial Establishment) Act, 2003 —
Section 3

Citation : (2024) 04 GUJ CK 0048

Hon'ble Judges : Hemant M. Prachchhak, J

Bench : Single Bench

Advocate : Nipul H Gondalia, Chintan Popat, Kishan Prajapati, Monali Bhatt

Final Decision : Allowed

Judgement

Hemant M. Prachchhak, J

[1] Rule. Learned Additional Public Prosecutor Ms.Monali Bhatt waives service of notice of rule for and on behalf of the respondent – State.

[2] By way of present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant – 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.11201002210011 of 2021 before CID Crime, Ahmedabad Zone, Ahmedabad City Police Station for the offences under Sections 406, 420, 114 and 120-B of the Indian Penal Code and Section 3 of the Gujarat Protection Interest of Depositors (In Financial Establishment) Act, 2003.

[3] Heard Mr.Chintan Popat for Mr.Kishan Prajapati, learned advocate for the applicant and Ms.Monali Bhatt, learned Additional Public Prosecutor for the respondent – State of Gujarat.

[4] Mr.Chintan Popat, learned advocate for the applicant submits that the nature

of allegations are such for which custodial interrogation at this stage is not necessary. He submits that the original accused has been released on anticipatory bail by this Court vide order dated 09.12.2022 passed in Criminal Misc. Application No.20868 of 2021. He submits that the applicant is aged about 65 years and he was not present at the time of place of offence. He submits that the entire transaction between 2011 to 2014 and the FIR came to be filed after ten years. He submits that accused – Sanju Rajendrakumar Kashyap , who is Director in Ram Infra (India) Private Limited Firm and the applicant was Managing Director in different firm i.e. RAM Earth Organizer Private Limited. He submits that besides the applicant will be available during the course of investigation and will not flee away from the justice. He submits that in view of the above, the applicant may be enlarged on anticipatory bail by imposing suitable conditions.

[5] Mr.Popat, 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 further submits that upon filing of such application by the Investigating Agency, the right of applicant to oppose such application on merits may be kept open.

[6] Ms.Monali Bhatt, learned Additional Public Prosecutor appearing on behalf of the respondent – State of Gujarat has opposed the grant of anticipatory bail on the grounds that considering the nature and gravity of the offence. She submits that the applicant has committed serious offence and therefore he may not be released on bail. Ms.Bhatt, learned Additional Public Prosecutor has placed on record report dated 15.04.2024 received from the Detective Police Inspector, CID Crime, Ahmedabad Zone, who is personally present before the Court, which is taken on record.

[7] Considering the fact that the dispute seems to be civil in nature and considering the report dated 15.04.2024, it appear that dispute is civil in nature. On perusal of the report, it prima facie appears that it is not the case of the applicant that he has not cooperated to the Investigating Officer nor there is any past antecedent and he has not involved in any other case except present one. It also appears that the original accused has been released on anticipatory bail by this Court vide order dated 09.12.2022 passed in Criminal Misc. Application No.20868 of 2021. It is also relevant to note that the applicant is shown as Director of Ram Agri Infra (India) Private Limited but considering the Form-32, it appears that the applicant is Managing Director of RAM Earth Organizer Private Limited. It is say of the applicant that even today, applicant is ready and willing to execute the sale deed on payment of the remaining deficit amount by the concerned plot holders. It seems that complainant is now not willing to pay any amount to the present applicant and they are only harassing the applicant. Considering all these facts, this Court is inclined to grant anticipatory bail to the applicant.

[8] This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Shri Gurubaksh Singh Sibbia & Ors., reported at (1980) 2 SCC 665 and in the case of Sushila Aggarwal Vs. State (NCT of Delhi) reported in AIR 2020 SC 831.

[9] In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR registered as C.R No.11201002210011 of 2021 before CID Crime, Ahmedabad Zone, Ahmedabad City Police Station, 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 the applicant shall :

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

(b) remain present at concerned Police Station on 22.04.2024 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;

[10] 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. 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.

Direct service is permitted.