

(2019) 08 GUJ CK 0023

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 13194 Of 2019

Arjunbhai Narsingbhai Rathva

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 29-08-2019

Acts Referred:

Code Of Criminal Procedure 1973 — Section 438

Indian Penal Code, 1860 — Section 143, 147, 148, 149, 323, 342, 354(A)(1), 365, 427, 452, 504

Gujarat Police Act, 1951 — Section 135

Citation : (2019) 08 GUJ CK 0023

Hon'ble Judges : A.J. Desai, J

Bench : Single Bench

Advocate : Hardik A. Dave, Nisha Thakore

Final Decision : Allowed

Judgement

A.J. Desai, J

1. So far as applicant Nos. 1, 2, 4, 5, 6 and 7 namely Arjunbhai Narsingbhai Rathva, Udesinh Chhatrasinh Rathva, Fatesing Parsing Rathva, Muna @ Maniyabhai Karshanbhai Rathva, Parsingbhai Rupabhai Rathva and Ratansing Parsing Rathva are concerned, Mr. Hardik Dave, learned Advocate appearing for the applicants, does not press this application and seeks permission to withdraw present application. Permission, as prayed for, is granted. Present application is disposed of as withdrawn qua above-referred applicants. Rule is discharged qua applicant Nos. Nos. 1, 2, 4, 5, 6 and 7.

2. This application is entertained qua applicant Nos. 3, 8, 9 and 10 namely Ankeshbhai Arjunbhai Rathva, Ranjulaben Nileshbhai Rathva, Baki @ Vakhiben Arjunbhai Rathva and Champaben Chhatrasinh Rathva.

3. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant Nos. 3, 8, 9 and 10 accused have prayed to

release them on anticipatory bail in case of their arrest in connection with the FIR registered at C.R. No. I - 49 of 2019 with Halol Rural Police Station for the offenses punishable under Sections 143, 147, 148, 149, 365, 342, 452, 323, 504, 427 and 354(A)(1) etc. of the Indian Penal Code and under Section 135 of the Gujarat Police Act.

4. Learned advocate for the applicant Nos. 3, 8, 9 and 10 submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. Besides, the applicants are available during the course of investigation and will not flee from justice. In view of the above, the applicants may be granted anticipatory bail.

5. Learned advocate for the applicant Nos. 3, 8, 9 and 10 on instructions states that the applicant Nos. 3, 8, 9 and 10 are 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 applicants accused to oppose such application on merits may be kept open.

6. 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.

7. Learned advocates appearing on behalf of the respective parties do not press for further reasoned order.

8. Having heard the learned advocate for the parties and perusing the investigating papers and as well as considering of the case and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicant Nos. 3, 8, 9 and 10. This Court has also taken into consideration the law laid down by the Hon'ble Apex

Court in the case of *Siddharam Satlingappa Mhetre v. State of Maharashtra* as reported at (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*, as reported at (1980) 2 SCC 665.

9. In the result, the present application is allowed by directing that in the event of applicant Nos. 3, 8, 9 and 10 herein being arrested pursuant to FIR registered at C.R. No. I - 49 of 2019 with Halol Rural Police Station, they shall be released on bail on furnishing a personal bond of Rs. 10,000/- (Rupees Ten Thousand Only) each with one surety of like amount on the following conditions:

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

(b) They shall remain present at concerned Police Station on 05.09.2019

between 11.00 a.m. and 2.00 p.m.;

(c) They 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) They 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) They 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) They 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;

10. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicant Nos. 3, 8, 9 and 10. The applicant Nos. 3, 8, 9 and 10 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 The applicant Nos. 3, 8, 9 and 10, 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 Nos. 3, 8, 9 and 10 on bail.

12. Rule is made absolute to the aforesaid extent qua applicant Nos. 3, 8, 9 and 10. Application is disposed of accordingly. Direct service is permitted.