

(2022) 07 GUJ CK 0096
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 12792 Of 2022

Ashish Dilipbhai Joshi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 25-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Gujarat Prohibition Act, 1949 — Section 65(a), 65(e), 81, 98(2), 116B

Citation : (2022) 07 GUJ CK 0096

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Y J Patel, Ronak Raval

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr.Y. J. Patel appearing on behalf of the applicant and learned Additional Public Prosecutor Mr.Ronak Raval on behalf of the respondent-State.

2. Rule. Learned APP waives service of rule 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.11993004220138 of 2022 registered with Bhachau Police Station, District Kutch on 27.4.2022 for offences punishable under Sections 65(a), 65(e), 116-B, 98(2) and 81 of the Gujarat Prohibition Act, 2016.

4. Learned Advocate Mr.Y. J. Patel for the applicant would submit that the present applicant has been falsely implicated in the alleged offence and the co-accused has been enlarged on regular bail. Learned Advocate Mr.Patel for the applicant states that the applicant was not present at the time when the muddamal/vehicle

with prohibited liquor was seized and the vehicle in question does not belong to the applicant. Learned Advocate Mr.Patel would submit that the applicant was arraigned as an accused on the basis of the statement of the co-accused and there was no material to show the involvement of the applicant in the alleged offence. Learned Advocate Mr.Patel would submit that the applicant is ready and willing to abide by any stringent conditions that may be imposed by this Hon'ble Court and would request that the applicant may be granted anticipatory bail.

5. Learned APP Mr.Raval for the respondent State would vehemently oppose grant of anticipatory bail to the present applicant by submitting that having regard to the facts and circumstances narrated in the FIR, releasing the present applicant on anticipatory bail may not be in the interest of the investigation. Having regard to the same, learned APP would submit that the present applicant may not be granted anticipatory bail by this Court.

6. Having heard the learned Advocates for the parties and having perused the investigation papers, following aspects are taken into consideration by this Court:

1. That the applicant has been arraigned only on the statement of the co-accused No.2 and beyond that statement, there is no other corroborating material, whereby there would be prima facie material to show that the applicant was involved in the offence in question;

2. That there are no call details on record between the applicant and other co-accused since, as per the record, the applicant allegedly had made a call through WhatsApp;

3. That there are no antecedents of the applicant being involved in any criminal activity herein before.

7. Having regard to the circumstances noted above, 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.

8. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR No.11993004220138 of 2022 registered with Bhachau Police Station, District Kutch on 27.4.2022, the applicant shall be released on anticipatory bail on furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety of like amount, on the following conditions that the applicant:

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

(b) shall remain present at the concerned Police Station on 28.07.2022 between 11:00 a.m. and 2:00 p.m.;

(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 him from disclosing

such facts to the Court or to any police officer;

(d) 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) 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;

(f) 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;

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

9. 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.

10. 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.