

(2020) 08 GUJ CK 0173
In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 9171 Of 2020

Ashok Ranmal Dodiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 120B, 379
Petroleum And Mineral Pipeline Act, 1962 — Section 15(2), 15(4)
Prevention Of Damage To Public Property Act, 1984 — Section 3, 4
Explosive Substance Act, 1908 — Section 4

Citation : (2020) 08 GUJ CK 0173

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : Virat G Popat, Pranav Trivedi

Final Decision : Allowed

Judgement

Gita Gopi, J

1. Rule. Mr. Pranav Trivedi, learned Additional Public Prosecutor, waives service of notice of rule on behalf of respondent-State.

2. This application has been preferred under section 438 of the Code of Criminal Procedure seeking anticipatory bail in connection with the first

information report being I-C.R. No.1 of 2020 registered with ATS Police Station, Ahmedabad for the offences punishable under sections 379, 120-B

of the Indian Penal Code, section 15(2), 4 of the Petroleum and Mineral Pipeline Act, 1962, sections 3, 4 of the Damage to Public Property Act and

section 4 of the Explosive Substance Act, 1908.

3. Mr. Virat Popat, learned advocate for the applicant, submitted that the main accused against whom allegation of theft of crude oil is made, has been

granted bail. At present according to the record, Mr. Popat, submitted that the only allegation against the present applicant would be providing stay to the main accused. Referring to the documents produced by the applicant, Mr. Virat Popat, submitted that such allegations are against all the other co-accused. He further submitted that as per the report of the Police Inspector, ATS Police Station, Ahmedabad, the diesel was sold in part thus, allegations of selling diesel only to the present applicant would not sustain. Mr. Popat, further submitted that the Police have alleged same version against all the other co-accused. He further submitted that the applicant would not have any knowledge of the persons who would come with the main accused as guests and there are no criminal antecedents against the present applicant. It was therefore prayed to grant anticipatory bail to the present applicant.

4. Mr. Pranav Trivedi, learned Additional Public Prosecutor, submitted that the allegations against the present applicant is of harbouring main accused.

There are CDRs which shows about 71 calls made by the present applicant to the main accused and from the very beginning, the applicant was

involved in the conspiracy. The present applicant has send his vehicle Camper Car to Chitrod to get the instruments for puncturing the pipeline and

those instruments were kept in the field opposite his borewell godown. Such facts have come in the statement of Mohammad Afzal @ Rustam Haji.

The camper vehicle was used by the main accused to go to and fro to the place of offence, hence, prima facie there are evidences against the present

applicant and thus, prayed that no discretion should be exercised in favour of the present applicant.

5. Heard the learned advocates for the parties and perused the material on record. The statements and report of S.N. Parmar, Police Inspector, ATS

Police Station, Ahmedabad reflects that the involved diesel was sold in part. The allegations are of bringing instruments in the vehicle of the present

applicant for puncturing the pipeline but intention and motive cannot be found from the documents on record. The evidence of camper vehicle being

used for bringing instruments for puncturing the pipeline and the same being kept in the godown of the present applicant-accused, would not attract

any of his intention along with the main accused. The police has not produce on record any evidence regarding involvement of the present applicant in

the activity of 'bunkering'. The applicant had permitted main accused shelter and vehicle was used for bringing instruments, would not at present

show any of his conspiracy with the co-accused. The call details does not reflect conversation and those are to be proved by evidence.

6. As relied upon by the learned advocate for the applicant to the decision rendered in case of Solanki Ravibhai Dipubhai and Others vs. State of

Gujarat and Others, reported in (1992) 1 GLR 631, the principle laid down therein and considering the facts of the present case, discretion is required

to be exercised in favour of the present applicant. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the

case of Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors., reported at [2011] 1 SCC 69,4 wherein the Hon'ble Apex Court

reiterated the law laid down by the Constitution Bench in the case of Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab, reported at (1980) 2

SCC 565.

7. In the result, the present application is allowed. The applicant is ordered to be released on bail in the event of his arrest in connection with the first

information report being I- C.R. No.1 of 2020 registered with ATS Police Station, Ahmedabad on executing 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 themselves available for interrogation whenever required;

(b) shall remain present at concerned Police Station on 21.08.2020 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 till further orders;

(f) shall not leave India without the permission of the concerned trial court and if having passport shall deposit the same before the concerned 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;

8. 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.

9. At the trial, the concerned trial Court shall not be influenced by the prima facie observations made by this Court in the present order. Rule is made

absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email

forthwith.