

(2022) 06 GUJ CK 0178

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9397 Of 2022

Ashvin Babubhai Mashot

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 28-06-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 306, 506(2)

Gujarat Money Lenders Act, 2011 — Section 5, 33(3), 40, 42

Citation : (2022) 06 GUJ CK 0178

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Sandeep R Limbani, Mahesh K Poojara, L B Dabhi

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr. Sandeep R. Limbani for the applicant and learned Additional Public Prosecutor Mr. L.B. Dabhi 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 prays for being released on anticipatory bail in connection with FIR No. 11189006220245 of 2022 registered with Tankara Police Station, District Morbi on 20.04.2022 for offences punishable under Sections 306 and 506(2) of the Indian Penal Code and Sections 5, 33(3), 40 and 42 of the Gujarat Money Lending Act.

4. Learned Advocate Mr. Limbani for the applicant would submit that vague allegations have been levelled against the applicant in the FIR, more particularly the role attributed to the applicant is that the applicant had borrowed money from the deceased and whereas the FIR also contains names of various persons from whom the deceased had borrowed money. Learned Advocate would submit

that a very general allegations that, all the persons had harassed the deceased, resulting in the deceased committing suicide, has been levelled in the FIR. Learned Advocate Mr. Limbani would submit that the present applicant, having borrowed money from the deceased, while the applicant may not have repaid the amount within time, but it could not be alleged that because of the same the deceased had committed suicide. Learned Advocate would also draw the attention of this Court to the orders passed by learned Co-ordinate Bench of this Court in case of other co-accused where the FIR has been quashed, on the ground of settlement between the parties. Learned Advocate would submit that while the first informant had settled the issue with the present applicant and while the first informant, has filed an affidavit in the present application stating as much, and whereas this Court considering the same, may release the applicant on anticipatory bail.

Learned Advocate Mr. Limbani 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 her remand. Learned Advocate 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. This application has been vehemently opposed by learned Additional Public Prosecutor Mr. Dabhi appearing on behalf of the respondent-State, who would submit that the applicant is named in the FIR and whereas specific role is attributed to the applicant. Furthermore the suicide note written by the deceased also reflects the name of the applicant. Having regard to the same, learned APP would submit that this Court may not exercise discretion in favour of the applicant.

6. Having heard the learned Advocates for the parties, the following aspects are considered by this Court:

[1] That the FIR alleges the present applicant had borrowed money from the deceased and the applicant was not repaying the same and whereas very general allegations against all the accused have been levelled that all the accused were harassing the deceased.

[2] This Court has also considered the fact that insofar as co-accused is concerned, on consent given by the first informant, the FIR against the said co-accused has been quashed by the learned Co-ordinate Bench of this Court.

[3] Though in the prima facie opinion of this Court, any affidavit or otherwise or document signed by the first informant or witness, in an application for bail/ anticipatory bail might amount to tampering with witnesses or influencing the witnesses, at the same time, the fact of the applicant having filed an application before the learned Co-ordinate Bench of this Court for quashing of the FIR on the basis of consent, cannot be ignored.

7. In this view of the matter 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 the FIR No. 11189006220245 of 2022 registered with Tankara Police Station, District Morbi, 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 01.07.2022 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.

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.