

(2023) 04 GUJ CK 0036
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 21104 Of 2022

Asmaben Rajakbhai Kasmani

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 114, 120B, 406, 420

Gujarat Protection Of Interests Of Depositors (In Financial Establishment) Act, 2003 —
Section 3, 4

Citation : (2023) 04 GUJ CK 0036

Hon'ble Judges : Nirzar S. Desai, J

Bench : Single Bench

Advocate : Apurva R Kapadia, Dhairyawan D Bhatt, Jirga Jhaveri

Final Decision : Allowed

Judgement

Nirzar S. Desai, J

1. Rule. Learned APP, Ms.Jirga Jhaveri waives service of notice of Rule on behalf of respondent-State.

2. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant - accused has prayed for anticipatory bail in connection with the FIR bearing No.11208050221109 of 2022 registered with A Division Police Station, Dist.Rajkot for the offences punishable under Sections 406, 420, 120B and 114 of the Indian Penal Code and Sections 3 and 4 of Gujarat Protection of Interests of Depositors (in Financial Establishment) Act, 2003.

3. Learned advocate for the applicant submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. He further submits that the applicant will keep himself available during the course of investigation, trial also and will not flee from justice.

4. 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 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. Learned advocate, therefore, submits that considering the above facts, the applicant may be granted anticipatory bail.

5. 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.

6. Learned advocate Mr.Dhairyawar Bhatt for original complainant opposed this application vehemently and submitted that this application may be rejected.

7. Having heard the learned advocates for the parties and perusing the material placed on record 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.

8. This Court has considered following aspects,

(i) in respect of the very same alleged scam another victim had committed suicide for which an FIR being C.R.No.I- 11208050214084 of 2021 was registered and there the present applicant has been granted anticipatory bail by the coordinate Bench of this Court vide order dated 13.10.2021 passed in Criminal Miscellaneous Application No.15886 of 2021 wherein the Coordinate Bench of this Court, in para:5, made following observations:

"5) Following aspects are also considered:-

I) The FIR is registered on 09.08.2021 for the offence which is alleged to have taken place on 01.06.2021.

II) Learned APP under instructions of IO is unable to bring on record any special circumstances against the applicant.

III) The applicant is a lady accused. The investigation pertains to the amount received from the investors under the scheme and the deceased being one part of the scheme, had committed suicide as according to her, the investors were demanding the returns of their investments and she was not able to answer them.

IV) The investigation done thus far, indicates that it was the deceased, who had taken money from the investors for the purpose of scheme, however, purchased the gold for her own purpose and as and when the investors used to demand for money, the gold purchased was given to the finance company for securing the loan and from the loan amount, the amount was returned to investors for some

time.

Thereafter, it appears that the financial chain has broken, as a result of which, the deceased was unable to give the money to the scheme or to the investors, which led to the unfortunate event.”

(ii) Considering the fact that this is another FIR under different provisions of sections by another victim, however, as the applicant has already been granted anticipatory bail in respect of previous FIR, the applicant is required to be enlarged on anticipatory bail in respect of the present FIR as well.

9. In the facts and circumstances of the present case, since the custodial interrogation of the applicant is not required, I am inclined to consider the case of the applicant.

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 Vs. State of Maharashtra and Ors., 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 & Ors. Vs. State of Punjab, reported at (1980) 2 SCC 565.

11. In the result, the present application is allowed. The applicant is ordered to be released on bail in the event of their arrest in connection with FIR bearing No.11208050221109 of 2022 registered with A Division Police Station, Dist.Rajkot on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of like amount on the following conditions that the applicant:

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

(b) shall remain present at concerned Police Station on 15.04.2023 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 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;

12. 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.

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

14. Rule is made absolute to the aforesaid extent.

Direct service is permitted.