

(2023) 05 GUJ CK 0038

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 8399 Of 2023

Auzef Khurshidahemad Tirmizi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 09-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 114, 294(b), 323, 341, 384, 386, 506(1)

Citation : (2023) 05 GUJ CK 0038

Hon'ble Judges : M. R. Mengdey, J

Bench : Single Bench

Advocate : CB Dastoor, Jirga Jhaver

Final Decision : Allowed

Judgement

M. R. Mengdey, J

1. 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.11191008230136 of 2023 registered with Chandkheda Police Station, District Gandhinagar for the offences punishable under Sections 386, 384, 341, 323, 294(b), 506(1) and 114 of the IPC.

2. Learned advocate for the applicant submits that the main accused viz. Abeda Majidhusen Shaikh has already been enlarged on anticipatory bail by this Court vide order dated 02.05.2023 passed in Criminal Misc.Application No.6264 of 2023, and therefore, on the ground of parity, the applicant is entitled to be enlarged on anticipatory bail.

3. Learned advocate for the Applicant has further argued 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 submitted 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, submitted 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 and submitted that the role attributed to the present applicant is different than the role attributed to the applicant-accused, who has been granted anticipatory bail.

6. Heard the learned advocates for the parties and perused the material on record. The record indicates that it was co-accused – Abeda Majidhusen Shaikh, who had demanded the money from the first informant and the said accused has already been enlarged on anticipatory bail by this Court. Therefore, considering 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.

7. 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. Further, this Court has also taken into consideration the ratio laid down in the case of Sushila Aggarwal and Ors. v. State (NCT of Delhi) and Anr. in Special Leave Petition No. 7281-7282/2017 dated 29.01.2020.

8. 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 FIR No.11191008230136 of 2023 registered with Chandkheda Police Station, District Gandhinagar 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 himself available for interrogation whenever required;

(b) shall remain present at concerned Police Station on 16.05.2023 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;

(g) it would be open to the Investigating Officer to file an application for remand if she considers it proper and just and the learned Magistrate would decide it on merits;

9. 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.

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

11. Rule is made absolute to the aforesaid extent. Direct service is permitted.