

(2023) 02 GUJ CK 0103
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 17494 Of 2022

Babubhai Mithabhai Vaghela

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 28-02-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section
Indian Penal Code, 1860 — Section 114, 306

Citation : (2023) 02 GUJ CK 0103

Hon'ble Judges : Umesh A. Trivedi, J

Bench : Single Bench

Advocate : Ramnandan Singh, KM Antani

Final Decision : Allowed

Judgement

Umesh A. Trivedi, J

1. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant has prayed to release him on anticipatory bail in case of his arrest in connection with the FIR registered as C.R No.11197005220746 of 2022 before Vadodara Taluka Police Station, District: Vadodara (Rural) for the offences under Sections 306 and 114 of the Indian Penal Code.

2. Heard Mr. Ramnandan Singh, learned advocate for the applicant and Mr. K.M.Antani, learned Additional Public Prosecutor for the respondent – State

3. Learned advocate for the applicant submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. Besides the applicant will be available during the course of investigation and will not flee away from the justice. In view of the above, the applicant may be enlarged on anticipatory bail by imposing suitable conditions.

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. Learned advocate for the applicant further submits that upon filing of such application by the Investigating Agency, the right of applicant to oppose such application on merits may be kept open.

5. Learned Additional Public Prosecutor appearing on behalf of the respondent-State has opposed grant of anticipatory bail on the grounds that considering the nature and gravity of the offence.

6. Following aspects are considered.

(A) Co-accused, Sundaram Ashok Thakkar, is already released on anticipatory bail by the coordinate Bench of this Court vide an order dated 20.12.2022 in Criminal Misc. Application No.18475 of 2022 whereas other three accused named in the FIR preferred an application for quashing of it, they have been protected by this Court.

(B) As such, against all the accused, allegations are more or less same as deceased borrowed money from all of them and all names are referred in the suicide note. Thus, so far as present case is concerned, prima-facie, allegations against all are of similar in nature.

(C) Mr.Ramnandan Singh, learned advocate for the applicant submitted that even if he has lent any money to the deceased, he does not want to recover the same from family of the deceased. At the same time, he will not file any Civil Suit based on so called notarized agreement to sell entered into with the deceased and him. Therefore, he has submitted that on assurance, he be granted anticipatory bail.

7. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Shri Gurubaksh Singh Sibbia & Ors., reported at (1980) 2 SCC 665 and in the case Sushila Aggarwal Vs. State (NCT of Delhi) reported in AIR 2020 SC 831.

8. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR registered as C.R No.11197005220746 of 2022 before Vadodara Taluka Police Station, District: Vadodara (Rural), 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 that the applicant shall :

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

(b) remain present at concerned Police Station on 6th March, 2023 between 11.00 a.m. and 2.00 p.m.

(c) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade from disclosing

such facts to the court or to any police officer;

(d) 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) 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) not leave India without the permission of the Court and if having passport shall deposit the same before the 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;

(h) As volunteered by the applicant, he shall not demand any money from the family of the deceased if at all he has lent any money as also he shall not file any Civil Suit or proceedings for the enforcement of the so called notarized agreement to sell in respect of property executed by the deceased with the applicant.

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 Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the applicant on bail.

11. Rule is made absolute. Direct service is permitted.