

(2021) 06 GUJ CK 0106
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 2066 Of 2021

Babulal Keshrimal Jain

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 22-06-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 120B, 406, 409, 420
Gujarat Protection Of Interest Of Depositors Act, 2003 — Section 3
Prize Chits And Money Circulation Schemes (Prohibition) Act, 1978 — Section 4, 5, 6, 7

Citation : (2021) 06 GUJ CK 0106

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Kruti M Shah, Moxa Thakker

Final Decision : Allowed

Judgement

A.S. Supehia, J

[1] Heard the learned advocates for the respective parties by video conferencing.

[2] By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant-accused has prayed for bail in

connection with the FIR being C.R. No.I-03 of 2020 registered with C.I.D. Crime, Vadodara Zone Police Station, District Vadodara for the offences

under Sections 406, 409, 420 and 120B of the Indian Penal Code, 1860 and under section 3 of the Gujarat Protection of Interest of Depositors Act,

2003 as well as under sections 4, 5, 6 and 7 of the Prize Chits and Money Circulation Schemes (Prohibition) Act, 1978.

[3] It is the case of the prosecution that the accused No.1 â?" Dilip Babulal Jain and his father i.e. the present applicant had formed various

companies and partnership firms from 2015 to 2020, without the permission of Reserve Bank of India (RBI) and tried to procure the money from the

investors however, after obtaining such money and giving assurances that they would get the returns of such money, nothing was paid to them.

[4] Learned advocate for the applicant has submitted that son of the applicant i.e. Dilip Babulal Jain, who is shown in column No.1 as the prime

accused has been released on regular bail by the trial court vide judgement and order dated 04.12.2020 passed in Criminal Misc. Application No.36 of

2020 and the accused No.2 â€" Dharmesh Hathising Solanki, whose name also figures in the charge-sheet is released by the trial court by the order

dated 05.10.2020 passed in Criminal Misc.(GPID) Application No.27 of 2020. She has also submitted that the applicant is 76 years of age and he is

arraigned as an accused only because his son is involved in the offence. It is further submitted that the applicant is ready and willing to co-operate

with the investigation and no summons are issued by the CGST authorities against the applicant alleging any crime or evasion of any tax and he is

wrongly shown in column No.2 of the charge-sheet. She has also submitted that the charge-sheet contains the statement of such investors, who have

stated that they have received most of the amount. It is submitted that the nature of allegations are such for which custodial interrogation of the

applicant at this stage is not necessary. She has further submitted that the applicant will keep himself available during the course of investigation, as

well as trial also and will not flee from justice.

[4.1] Learned advocate for the applicant, on instructions, has stated 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. She has

further submitted that upon filing of such application by the investigating agency, the right of the applicant accused to oppose such application on

merits may be kept open. Learned advocate, therefore, has submitted that considering the above facts, the applicant may be granted anticipatory bail.

[5] On the other hand, the learned Additional Public Prosecutor appearing on behalf of the respondentâ€" State has opposed grant of anticipatory bail

looking to the nature and gravity of the offence. While placing reliance on the report of the investigating officer, she has submitted that the applicant is

the Director of several firms namely, M/s.Grabdeal Advertisement and Tourism LLP, M/s.Glamox Solution Pvt. Ltd., M/s.Genesis Group and

M/s.Grabdeal International, who is involved in cheating and fraud with all the investors.

[6] 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.

[7] This Court has considered following aspects;

(a) Looking to the age of the applicant i.e.76 years;

(b) Prima facie charge-sheet reveals that all the allegations are levelled against the accused Nos.1 and 2, who are already released on regular bail by

the trial court;

(c) Custodial interrogation of the applicant would not be necessary as the case of the prosecution is premised on documentary evidence.

[8] This Court has also taken into consideration the law laid down by the Apex Court in the cases of Sushila Aggarwal vs. State (Nct of Delhi), AIR

2020 SC 831 and Siddharam Satlingappa Mhetre vs State of Maharashtra, A.I.R. 2011 S.C. 312.

[9] 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

being C.R. No.I-03 of 2020 registered with C.I.D. Crime, Vadodara Zone Police Station, District Vadodara on his executing a personal bond of

Rs.10,000/- (Rupees Ten Thousand Only) with one surety of like amount on the following conditions that he :

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

(b) shall remain present at the concerned Police Station on 29.06.2021 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.

[10] Despite this order, it would be open for the investigating agency to apply to the competent Magistrate, for police remand of the applicant, if he

considers it proper and just and the Magistrate would decide it on merits. The applicant shall remain present before the concerned Magistrate on the

first date of hearing of such application and on all subsequent occasions, as may be directed by the concerned Magistrate. This would be sufficient to

treat the accused in the judicial custody for the purpose of entertaining the 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 concerned 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.

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

[12] The application is allowed in the aforesaid terms. RULE is made absolute to the aforesaid extent. Registry is directed to send a copy of this order

to the concerned authority / court through Fax message, email and/or any other suitable electronic mode.

[13] Learned advocate for the applicant is also permitted to send a copy of this order to the concerned authority/court through Fax message, email

and/or any other suitable electronic mode.