

(2020) 08 GUJ CK 0025

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9183 Of 2020

Balvir Bishandas Gandothara

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 409, 506

Citation : (2020) 08 GUJ CK 0025

Hon'ble Judges : B.N. Karia, J

Bench : Single Bench

Advocate : Hardik A Dave, H.K. Patel

Final Decision : Disposed Of

Judgement

B.N. Karia, J

RULE. Learned Additional Public Prosecutor waives service of notice of rule on behalf of the respondent-State.

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.11210048200696 of 2020 before Umra Police Station, District: Surat for the offence under Sections 409 and 506 of Indian Penal Code.

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 is 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.

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 would further submit that upon filing of such application by the Investigating Agency, the right of applicant to oppose such application on merits may be kept open.

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.

Heard the learned Advocates for the respective parties and perused the papers.

Having heard the learned counsel for the parties and perusing the record of the case and taking into consideration the facts of the case, nature of

allegations, role attributed to the accused, without discussing the evidence in detail, it appears from the record that the dispute between the applicant

and the original complainant is relating to supplying the goods of coal and non-payment thereof by the present applicant. Thereafter, issue was settled

between the parties and the applicant has filed his affidavit twice and payment under issue is already made to the first informant in view of the

settlement. He has also produced Annexure AA2-bank statement of the applicant, wherein amount of Rs.15,47,525/- was debited on 27th July 2020

through RTGS in favour of the Taranjot Resource ie., first informant.

If we consider the complaint lodged by the complainant, it is stated that he is serving as Supplier Director in Taranjot Resource Private Limited since

last five years selling coal in the different companies of the India. Original complainant i.e., first informant has filed his affidavit saying that he has also

filed previous affidavit on 8th July 2020, wherein he has stated that due to intervention of the respective members of the society and family mutual

understanding, an agreement was arrived at between he himself and the original accused persons and thus, the complainant has no grievance with the

applicant as well as he has no objection if the applicant is granted anticipatory bail in the present matter. He has also acknowledged the receipt of an

amount from the applicant to the tune of Rs.15,47,525/- in the bank account of the Taranjot Resource Private Limited ie., first informant.

Considering the peculiar fact that the dispute has been settled between the

parties as declared in the affidavit filed by the applicant, I am inclined to grant anticipatory bail to the applicant. This Court has also taken into consideration the law laid down by the Honâ??ble Apex Court in the case of Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors. as reported at [2011] 1 SCC 694,¹ wherein the Honâ??ble Apex Court reiterated the law laid down by the Constitutional Bench in the the case of Shri Gurubaksh Singh Sibbia & Ors., as reported at (1980) 2 SCC 665.

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.11210048200696 of 2020 before Umra Police Station, District: Surat, the applicant shall be released on bail on furnishing a personal bond of

Rs.10,000/- (Rupees 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 13.08.2020 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; 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. 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. Application is disposed of accordingly.

Registry is directed to send a copy of this order to the concerned Police Station through fax or email forthwith.