

(2024) 02 GUJ CK 0055
In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Anticipatory Bail) No. 21661 Of 2023

Bhagwanjibhai Babubhai Savariya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 14-02-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Citation : (2024) 02 GUJ CK 0055

Hon'ble Judges : J. C. Doshi, J

Bench : Single Bench

Advocate : Ankit Shah, Bhishma A. Rawal, Harshad D Barot, Asmita Patel

Final Decision : Allowed

Judgement

J. C. Doshi, J

1. By way of the present petition under Section 438 of the Code of Criminal Procedure, 1973, the petitioner has prayed to release him on anticipatory bail in case of his arrest in connection with the FIR registered as C.R.No.11189005231949 registered with Morbi Taluka Police Station.

2. Learned advocate for the petitioner submits that considering the nature of allegations, role attributed to the petitioner, the petitioner may be enlarged on anticipatory bail by imposing suitable conditions.

3. Learned advocate for the first informant would submit that the victim was used as there was some photographic evidence with the petitioner and she was threatened and thereby, the petitioner has taken the advantage of the situation, Hence, he submits to dismiss the petition.

3.1 Adopting the submissions of learned advocate for the first informant, 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.

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

5. Having heard the learned advocate for the parties and perusing the investigation papers, it is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon'ble Apex Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided. I have considered the following aspects.

(1) The victim is major and aged 26 years.

(2) Considering the FIR, nowhere it is stated that the petitioner has promised the victim for marriage.

(3) The victim has developed physical relations multiple time with the petitioner on her own volition that is what exactly stated in the FIR. Hence, the relationship appears to be consensus.

(4) The impugned FIR is filed with the result of souring of the relationship between the petitioner and the victim.

(5) The incident took place between 13.3.2023 to 13.10.2023 and the FIR is filed on 20.10.2023.

(6) Even after the victim left the job, she has continued with the relationship with the petitioner.

(7) Learned advocate for the first informant had submitted that the petitioner has clicked photos and was kept in mobile of the petitioner, but to substantiate this contention, there is nothing on record.

6. 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, at this stage, I am inclined to exercise discretion in favour of the petitioner.

7. This Court while exercising discretion in favour of the petitioner has taken into consideration law laid down by the Apex Court in the case of Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors. [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitutional Bench in the the case of Shri Gurubaksh Singh Sibbia & Ors. Vs.

State of Punjab (1980) 2 SCC 665. This Court has also taken into consideration law laid down in the case of Sushila Agarwal v/s. State (NCT of Delhi [(2020) 5 SCC 1]).

8. In the result, the present petition is allowed by directing that in the event of applicant herein being arrested pursuant to FIR registered as C.R.No.11189005231949 registered with Morbi Taluka Police Station, the petitioner 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 petitioner :

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

(b) shall remain present at concerned Police Station on 11.3.2024 and 12.3.2024 between 10.00 a.m. and 4.00 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;

9. If breach of any of the above conditions is committed by the petitioner, the concerned learned Judge will be free to take appropriate action in the matter. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions in accordance with law. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the petitioner on bail.

Direct service is permitted.