

**(2021) 09 GUJ CK 0076**  
**In the Gujarat High Court**

**Case No :** R/Criminal Misc.Application No. 10599 Of 2021

Bhanabhai Mafatbhai Bharvad

APPELLANT

Vs

State Of Gujarat

RESPONDENT

**Date of Decision :** 21-09-2021

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 438  
Indian Penal Code, 1860 — Section 354, 395, 427, 447, 448  
Gujarat Police Act, 1951 — Section 135

**Citation :** (2021) 09 GUJ CK 0076

**Hon'ble Judges :** A.Y. Kogje, J

**Bench :** Single Bench

**Final Decision :** Allowed

## Judgement

A.Y. Kogje, J

1. At the outset, learned Advocate for the applicants seeks permission to withdraw the present application qua applicant No.2-Pratapbhai Karmanbhai Bharvad. Permission is granted. The application stands disposed of as withdrawn qua applicant No.2. Rule is discharged. I.R. granted earlier stands vacated.

2. This is an application by the applicant under Section 438 of the Code of Criminal Procedure, 1973 for anticipatory bail in the event of his arrest in connection with FIR being CR No.11215029200344 of 2020 before Tarapur Police Station, Anand for offence under Sections 447, 448, 354, 395, 427 and 120B of the Indian Penal Code and Section 135 of the Gujarat Police Act.

2. Learned advocate appearing on behalf of the applicant would submit that considering the nature of offence, applicant No.1, may be enlarged on anticipatory bail by imposing suitable conditions.

3. On the other hand, the learned APP appearing for the respondent-State has opposed this application and granting anticipatory bail to the applicant looking to the nature and gravity of the offence.

4. I have heard the learned Advocates appearing for the respective parties and perused the investigation papers and have also taken into consideration the facts of the case, nature of allegations, role attributed to the applicant-accused and without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicant. 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. as reported at [2011] 1 SCC 6941, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitutional Bench in the case of Shri Gurubaksh Singh Sibbia & Ors., as reported at (1980) 2 SCC 665.

5. So far as applicant No.1 is concerned, following aspects are also considered:-

I. The FIR is registered on 24.11.2020 for the offence which is alleged to have taken place on 24.11.2020.

II. Submission of learned Advocate for the applicant that no specific role is attributed to applicant No.1.

III. From the chart provided by the prosecution, it appears that in CCTV footage, presence of the applicant is not found.

IV. Even otherwise, as per the case of the prosecution, the applicant was merely present at the place of incident with stick. However, he has not used the said stick. The applicant was in contact with other co-accused.

V. Co-accused, identically situated, have been enlarged on anticipatory bail by Coordinate Bench of this Court vide order dated 09.08.2021 in Criminal Misc.Application Nos.5985, 6504 and 1955 of 2021.

VI. Learned APP under instructions of IO is unable to bring on record any special circumstances against the applicant.

6. Learned Advocate for the applicant on instructions states that the applicant is ready and willing to abide by all the conditions, including impositions of conditions with regard to the powers of Investigating Agency to file an application before the competent court for his remand. He would further submit 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.

7. In the result, the present application is allowed by directing that in the event of arrest of applicant herein - Bhanabhai Mafatbhai Bharvad in connection with FIR being CR No.11215029200344 of 2020 before Tarapur Police Station, Anand, the applicant shall be released on bail on his furnishing a personal bond of Rs.10,000/- (Rupees ten thousands only) with one surety of the like amount on the following conditions that he shall:

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

(b) shall remain present at the concerned Police Station on 28.09.2021 between 11.00 AM and 02.00 PM;

(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 from disclosing such facts to the court or to any police officer;

(d) shall not obstruct or hamper the police investigation and shall 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 without the permission of Trial Court;

(f) To mark presence once in fifteen days before the concerned Police Station till filing of the charge-sheet;

(g) shall not leave India without the permission of the Trial Court and if having passport, shall deposit the same before the Trial Court within a week; and

(h) 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 the same on merits;

8. 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.

9. 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 is made absolute qua applicant No.1.

Direct service is permitted.