

(2020) 07 GUJ CK 0082

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 10264 Of 2020

Bharat Alias Bholabhai Khimjibhai Kavad

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 31-07-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Prevention Of Corruption (Amendment) Act 2018 — Section 12, 13(1)(d), 13(2)

Indian Penal Code, 1860 — Section 34, 467, 468

Citation : (2020) 07 GUJ CK 0082

Hon'ble Judges : Sangeeta K. Vishen, J

Bench : Single Bench

Advocate : Anshin H. Desai, Shivangi D Vyas, Vh Kanara, Nisha Thakor

Final Decision : Allowed

Judgement

Sangeeta K. Vishen, J

1. Heard Mr.Anshin H. Desai, learned senior advocate with Ms.Shivangi D. Vyas, learned advocate for the applicant and Ms.Nisha Thakor, learned

Additional Public Prosecutor for the respondent State, through Video Conferencing.

2. Rule. Ms. Thakor, learned Additional Public Prosecutor waives service of notice of Rule on behalf of respondent State.

3. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant-accused has prayed for anticipatory

bail in connection with the FIR being CR No.2 of 2020 registered with Jamnagar ACB Police Station, Jamnagar for the offence punishable under

Sections 12, 13(1)(d) and 13(2) of the Prevention of Corruption (Amendment) Act, 1988 and Sections 467, 468 and 34 of the Indian Penal Code, 1860.

4. Mr. Anshin Desai, learned senior advocate appearing with Ms. Shivangi Vyas, learned advocate for the applicant submitted that the nature of allegations are such for which custodial interrogation at this stage is not necessary and that the applicant will keep himself available during the course of investigation, trial also and will not flee from justice. Mr. Desai, learned senior advocate submitted that the applicant is a contractor, aged 46 years and at this stage only for the offence alleged if he is apprehended, the whole family of the applicant would be disrupted. It is also submitted that the applicant has no criminal antecedents. Mr. Desai, learned senior advocate submitted that the role attributed to the applicant is less grave, compared to the role attributed to accused Nos. 1 and 2 and that it is not believable that out of 120 toilets, for which the contract was given to the applicant, the applicant would commit irregularity only for one toilet and that too for an amount of Rs. 12,600/-, i.e. 90% of the amount. It is submitted that accused Nos. 1 and 2 have been granted anticipatory bail by the coordinate bench of this Court and the case of the applicant may also be considered accordingly.

5. 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. It is further submitted 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. It is further stated that the applicant will remain present before the Investigating Officer on 06.08.2020 and will provide the permanent address. Learned advocate, therefore, submitted that considering the above facts, the applicant may be granted anticipatory bail.

6. Ms. Thakor, 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.

7. Having heard the learned advocates for the respective parties and perusing the material placed on record as well as considering the facts of the case, nature of allegations, gravity of offences, role attributed to the accused and punishment prescribed for the alleged offences, without discussing the evidence in detail, at this stage, this Court is inclined to grant anticipatory

bail to the applicant. This Court has also considered the aspects viz. (i) the alleged offence has taken place six years back, whereas the First Information Report is lodged in the year 2020; (ii) accused Nos.1 and 2 have been granted anticipatory bail by the coordinate bench of this Court; (iii) the applicant has no criminal antecedents; and (iv) the amount involved, of which irregularity has been alleged to have been committed, is Rs.12,600/-. This Court has also taken into consideration the law enunciated by the Apex Court in the case of Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors., reported in (2011) 1 SCC 69,4 wherein the Apex Court reiterated the law laid down by the Constitution Bench in the case of Shri Gurubaksh Singh Sibbia & Ors. vs. State of Punjab, reported in (1980) 2 SCC 665.

8. 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

CR No.2 of 2020 registered with Jamnagar ACB Police Station, Jamnagar 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 the applicant shall â?

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

(b) remain present at concerned Police Station on 06.08.2020 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 him 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 not change his 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, 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;

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 applicant-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 applicant-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. Needless to say that at the trial, the trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

11. Rule is made absolute to the aforesaid extent. The Registry is directed to communicate this order to the concerned Police Station through email /

fax.