

(2022) 04 GUJ CK 0103

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 4609 Of 2022

Bharatbhai Arajانبhai Ko. Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 27-04-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 120(B), 465, 468, 471
Prevention Of Corruption Act, 1988 — Section 13(1)(C), 13(2)

Citation : (2022) 04 GUJ CK 0103

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

Bench : Single Bench

Advocate : P P Majmudar, Ronak Raval

Final Decision : Allowed

Judgement

A.S. Supehia, J

1. Heard the learned advocates for the respective parties.
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- 5 of 2021 registered with ACB Police Station, District Ahmedabad Rural for the offences under Sections 465, 468, 471 and 120B of the Indian Penal Code, 1860 and under Sections 13(1)(C) and 13(2) of the Prevention of Corruption Act.
3. The brief facts of the case are as under:-
 - 3.1 It is alleged that during the period of 2016-2017, the applicant and other accused had misused the power in the capacity of Talati- cum-Mantri, Sarpanch of Village Sankod, Taluka Viramgam, District Ahmedabad. It is further alleged that they forged and fabricated the bill of Rs.16,12,950/-regarding the grant amount, which was given by the State Government. It is further alleged that accused misused the said grant amount.

4. Learned advocate for the applicant submits that the nature of allegations are such for which custodial interrogation of the applicant at this stage is not necessary. He further submits 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 has submitted that as per the complaint filed in the year of 2016-2017, the village people had given an application on 04.03.2019 to the Director of the Anti-corruption Department, Ahmedabad and hence, there is a delay of 2 years. He has submitted that the pursuant to the aforesaid application, investigation was carried out, but the complaint was registered against the applicant on 09.12.2021 and hence, there is a delay of 4 years from the date of offence and this aspect was not considered by the trial court and the trial court rejected the anticipatory bail application of the applicant. He has submitted that there is no prima facie case against the present applicant and the so called offence was not committed by him as alleged in the complaint. He has submitted that the complainant himself has investigated the application submitted by the village people and the same would be infirmity in the case, which is bound to reflect on the credibility of the prosecution case. He has submitted that it appears from the complaint, that the forged bills were recovered during the preliminary inquiry and the same is in the custody of the Investigating Officer and hence, custodial interrogation of the applicant is not required. He has also submitted that the further the documentary evidence is not required and there is no question to temper with the investigation by the present applicant.

4.2 Learned advocate for the applicant has submitted that pursuant to the order dated 02.03.2022 passed by this Court, the applicant has deposited an amount of Rs.5,50,000/- before the Special Court.

4.3 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. He further submits 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, submits that considering the above facts, the applicant may be granted bail.

5. On the other hand, the learned Additional Public Prosecutor appearing on behalf of the respondent- State has opposed grant of bail looking to the nature and gravity of the offence.

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 bail to the applicant.

7. This Court has considered following aspects;

(a) there is delay in registering the FIR;

(b) the applicant has fully cooperated with the Investigating Officer and has remained present;

(c) the investigation is over and the applicant has deposited the amount of Rs.5,50,000/- before the Special Court. It is clarified that the depositing of the aforesaid amount shall be without prejudice to the rights and contentions of the applicant;

(d) Prima facie considering the facts of the case, the custodial interrogation of the applicant is not necessary at this stage;

(f) the co-accused has been released by this Court on anticipatory bail vide order dated 18.04.2022 passed in Criminal Misc. Application No.649 of 2022, since the said accused has deposited an amount of Rs.5,50,000/- as ordered by this Court.

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, AIR 2011 SC 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-05 of 2021 registered with ACB Police Station, District Ahmedabad Rural, 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 04.05.2022 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 if 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 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. Direct service is permitted.