

(2020) 08 GUJ CK 0195

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 8614 Of 2020

Bharatbhai Jivanbhai Bhraman (Rajgor) & 1 Other(s)

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 17-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Gujarat Prohibition Act, 1949 — Section 65(A)(E), 671A, 81, 83, 98(2), 99, 116B

Citation : (2020) 08 GUJ CK 0195

Hon'ble Judges : Dr A. P. Thaker, J

Bench : Single Bench

Advocate : Malav M Mulani, Maithili Mehta

Final Decision : Allowed

Judgement

Dr. A. P. Thaker, J

[1] RULE. Learned Additional Public Prosecutor waives service of notice of rule for respondent â?" State.

[2] Heard Mr. Malav Mulani, learned advocate for the applicants and learned Additional Public Prosecutor for the respondent â?" State through Video

Conferencing.

[3] By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicants - original accused have prayed to

release them on anticipatory bail in case of his arrest in connection with the FIR No. 11217036200245 of 2020 before Varahi Police Station, District:

Patan for the offences under Sections 65(A)(E), 67-1A, 116-B, 81, 83, 98(2) and 99 of the Prohibition Act.

[4] Learned advocate for the applicants submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary.

Besides the applicants will be available during the course of investigation and will not flee away from the justice. In view of the above, the applicants

may be enlarged on anticipatory bail by imposing suitable conditions.

[5] Learned advocate for the applicants on instructions states that the applicants are 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 their remand. Learned advocate for

the applicants further submits that upon filing of such application by the Investigating Agency, the right of applicants to oppose such application on

merits may be kept open.

[6] 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 parties and perused the materials 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

anticipatory bail to the applicants.

[8] This Court has considered following aspects;

(i) That the applicants are implicated on the basis of statement of co-accused;

(ii) the applicants were not found present at the time of raid;

[9] This Court has also taken into consideration the law laid down by the Honâ??ble Apex Court in the case of Shri Gurubaksh Singh Sibbia & Ors.,

as reported at (1980) 2 SCC 665 and the latest decision of the Hon'ble Apex Court in the case of Sushila Aggarwal Vs. State (NCT of Delhi) ,

reported in AIR 2020 SC 831.

[10] In the result, the present application is allowed by directing that in the event of applicants herein being arrested pursuant to FIR registered as FIR

No. 11217036200245 of 2020 before Varahi Police Station, District: Patan, the applicants shall be released on bail on furnishing a personal bond of Rs.

10,000/- (Rupees Ten Thousand only) each with one surety of like amount on the following conditions that the applicants shall :

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

(b) remain present at concerned Police Station on 24.08.2020 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;

[11] Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicants. The

applicants 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 applicants, 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

applicants on bail. Rule is made absolute. Application is disposed of accordingly.

[12] Registry is directed to intimate about this order to the concerned authorities through fax, email and/or any other suitable electronic mode. Learned

advocate for the applicants is also permitted to intimate about this order to the concerned authorities through fax, email and/or any other suitable

electronic mode.