

(2024) 03 GUJ CK 0106

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Anticipatory Bail) No. 5942 Of 2024,
R/Criminal Misc.Application No. 5961 Of 2024

Bhargav Kantibhai Dhameliya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 28-03-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 107, 306
Negotiable Instruments Act, 1881 — Section 138

Citation : (2024) 03 GUJ CK 0106

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

Bench : Single Bench

Advocate : BM Mangukiya, Bela A Prajapati, Chintan Dave, Soham Joshi

Final Decision : Allowed

Judgement

J. C. Doshi, J

1. By way of the present petitions under Section 438 of the Code of Criminal Procedure, 1973, the petitioners have prayed to release them on anticipatory bail in case of their arrest in connection with the FIR registered as C.R.No.11214020240426 of 2024 with Kamrej Police Station, Surat.

2. Heard the Mr. Mangukiya, learned advocate for the petitioners and learned APP for the respondent ? State.

3. Mr. Mangukiya, learned advocate for the petitioners would submit that ingredients of Section 107 of the IPC, which is essential for holding the charge u/s.306 are missing in the present case. There is no instigation by the present petitioners. He would further submit that the present petitioners were the sleeping partner in the restaurant business with the deceased and since loss was arrived in the business, the petitioners were decided to separate from the partnership firm. Consequently, one agreement at Annexure-A was also executed

between the deceased and the petitioners, whereby it is agreed that deceased shall pay Rs.3.5 lacs to each of the petitioners. He would submit that after 6th December, 2023 petitioners never talked with the deceased nor instigated nor demanded the money and therefore, there is no evidence to connect the petitioner with the alleged offence. Further it is submitted that the petitioners are permanent resident of Surat having movable and immovable properties. Petitioners are ready and willing to extend the co-operation and therefore, it is submitted to grant anticipatory bail by imposing suitable conditions.

4. Strenuously objecting to the bail application, learned Additional Public Prosecutor appearing on behalf of the respondent-State would submit that the deceased before dying had recorded one video in the mobile whereby he has stated that he is fed-up with the constant demand of the amount from the petitioners and therefore, he is committing suicide and therefore, there is a prima facie case against the petitioners and ingredients of Section 107 is also attracted and custodial interrogation is required and therefore, it is submitted to deny the anticipatory bail.

5. Having gone through the record and appreciating the arguments of learned advocates for both the sides in context to the FIR and other records, what prima facie appears that present petitioners are the partners in the ?Taste Takatak Restaurant? and were sleeping partner alongwith deceased. Since the loss has been occasioned in the partnership business, in view of Annexure-A, it was decided to disrupt the partnership firm and deceased was agreed to pay Rs.3.5 lacs each to other two sleeping partners, who are present petitioners. The prosecution has come-out with a case that the petitioners were constantly demanding amount of Rs.3.5 lacs (total Rs.7 lacs) from the deceased even before the date of cheque arrived. However, nothing is produced on record to establish this issue and therefore, it cannot be said that the petitioners instigated the deceased to commit suicide. Even otherwise asking for the money would not constitute the offence u/s.107 and since, necessary ingredients of Section 107 of the IPC is missing, consequently charge of Section 306 is not attracted.

6. At this juncture, I may refer to the decision in case of Mohit Singhal & Anr. vs. The State of Uttarakhand & Ors., rendered in Criminal Appeal No.3578 of 2023 by the Hon?ble Apex Court in regards to allegation of committal of suicide for demanding money and for the offence under Section 306 of the IPC following view is taken by the Hon?ble Apex Court. Paragraph 7 to 10 reads thus:

?7. The suicide note records that the third respondent had borrowed a sum of Rs.60,000/-.

According to the deceased, he had paid more than half of the amount to Sandeep. The suicide note records that as he could not pay the rest of the money, the first appellant came to his house and started abusing him. He stated that the first appellant had assaulted him, and therefore, he complained to the police. He further noted that the business of giving money on interest was

prospering. He stated that the third respondent is not a prudent woman, and due to her habit of intoxication and due to her conduct, she got trapped in this. In the suicide note, it is further stated that the first appellant has made his life a hell

8. According to the complaint of the third respondent, the incident in her shop of the first appellant threatening and assaulting her and her husband was on 15th June 2017. After that, notice under Section 138 of the Negotiable Instruments Act, 1881, was issued by Sandeep to the deceased on 27th June 2017. The suicide note was written three days after that, on 30th June 2017. The deceased committed suicide three days thereafter. Neither in the complaint of the third respondent nor in the suicide note, it is alleged that after 15th June 2017, the appellants or Sandeep either met or spoke to the third respondent and her deceased husband. Section 306 of the IPC makes abetment to commit suicide as an offence. Section 107 of the IPC, which defines the abetment of a thing, reads thus:

?Section 107 -- Abetment of a thing.- A person abets the doing of a thing, who? First.? Instigates any person to do that thing; or Secondly.?Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.? Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.? A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.? (underline supplied)

9. In the facts of the case, secondly and thirdly in Section 107, will have no application. Hence, the question is whether the appellants instigated the deceased to commit suicide. To attract the first clause, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Hence, the accused must have mens rea to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide.

10. In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose. The said incident allegedly happened more than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in the close proximity to the date of suicide. By no stretch of the imagination, the alleged acts of the appellants can amount to instigation to commit suicide. The deceased has blamed the third respondent for landing in trouble due to her bad habits.?

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 view of above, no case is made-out for the prosecution. The petition deserves consideration. Hence, the present petition is allowed by directing that in the event of petitioners pplicants herein being arrested pursuant to FIR registered as C.R.No.11214020240426 of 2024 with Kamrej Police Station, Surat, the petitioners 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 petitioners :

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

(b) shall remain present at concerned Police Station on 12th & 13th April, 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. It is clarified that whatever observations made hereafter are tentative and limited to the reason of this bail application and it will have no effect upon any other proceedings.

10. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the petitioner. The petitioners 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 petitioners, 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.

11. If breach of any of the above conditions is committed by the petitioners, 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 petitioners on bail.

Direct service is permitted.