

**(2020) 08 GUJ CK 0202**

**In the Gujarat High Court**

**Case No : R/Criminal Misc. Application No. 11149 Of 2020**

Chanabhai Hamirbhai Solanki

APPELLANT

Vs

State Of Gujarat

RESPONDENT

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**Date of Decision : 17-08-2020**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 438  
Indian Penal Code, 1860 — Section 114, 306, 498A

**Citation : (2020) 08 GUJ CK 0202**

**Hon'ble Judges : Ashutosh J. Shastri, J**

**Bench : Single Bench**

**Advocate : Ashish M Dagli, JK Shah**

**Final Decision : Allowed**

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## **Judgement**

Ashutosh J. Shastri, J

1.0 When the matter is taken up for hearing, at the outset, Mr.A.M.Dagli, learned advocate, has submitted that he would not like to press this

application qua applicant No.1. Accordingly, the present application stands disposed of as not pressed insofar as applicant No.1 is concerned.

2.0 Rule. Learned Additional Public Prosecutor waives service of notice of rule on behalf of respondent â?" State.

3.0 Present application is filed under Section 438 of the Code of Criminal Procedure seeking Anticipatory Bail as the applicant is apprehending arrest

in connection F.I.R. bearing C.R. No.I- 1120302320254 of 2020 registered with Junagadh City â?"Aâ?" Division Police Station, for the alleged

offences punishable under Sections 498A, 306 and 114 of the Indian Penal Code.

4.0 Heard, learned advocate for the applicants as well as learned Additional Public Prosecutor Mr.J.K.Shah.

5.0 Mr.A.M.Dagli, learned advocate for the applicants, has submitted that the applicant Nos.2 and 3 are lady accused and the applicant No.2 â?

Viruben is not keeping good health and is of an advanced age, whereas applicant No.3 Shantaben is concerned, she is already married and residing at

her in-laws place and, therefore, in the absence of any specific role being alleged against these applicants, they being lady accused, their case may

kindly be considered for grant of anticipatory bail. It has further been submitted that on the contrary, the deceased and the husband both were residing

separately from the family and there is no material specific in nature insofar as present applicants are concerned. It has further been submitted that

the applicants are not having any criminal antecedents and they are ready and willing to abide by any of the conditions which this Court may impose

upon while considering their case for anticipatory bail.

6.0 Against this, Mr.J.K.Shah, learned APP, has submitted that from the FIR in question, it appears that there are specific allegations levelled against

all the accused persons and as such, irrespective of the fact that they are residing separately, it would be of no consequence and at this stage, the

investigation is going on, no request be considered. However, the applicants being lady accused, having no criminal antecedents and the application is

not pressed qua applicant No.1 is concerned, the matter is left it to the discretion of the Court.

7.0 Having regard to the facts and circumstances of the case and having gone through overall material on record, ex-face it appears that the present

applicants are lady accused, the Court is inclined to consider the request, more particularly when the applicant No.3 â?" sister-in-law is residing

separately since more than 20 years at her in-laws house and so far as the applicant No.2 is concerned, who is mother-in-law, no doubt the allegations

are levelled but, was residing separately and she being a lady accused of advanced age, the Court is inclined to the consider the request insofar as the

applicant Nos.2 and 3 are concerned.

8.0 This Court has also taken into consideration the law laid down by the Apex Court in the case of Siddharam Satlingappa Mhetre v. State of

Maharashtra & Ors. reported in [2011] 1 SCC 694, wherein, the Apex Court reiterated the law laid down by the Constitutional Bench in the case of

Shri Gurubaksh Singh Sibbia & Ors. reported in [1980] 2 SCC 565.

9.0 Learned Counsel for the parties do not press for further reasoned order.

10.0 In the result, this application is allowed. It is directed that, in the event, the applicant herein is arrested pursuant to F.I.R. bearing C.R. No.I-

1120302320254 of 2020 registered with Junagadh City ???? Division Police Station, the applicants shall be released on bail on furnishing a bond of

Rs.10,000/- (Rupees Ten Thousand only) each with one surety of like amount on following conditions :-

[a] shall cooperate with the investigation and make himself available for interrogation whenever required;

[b] shall remain present at concerned Police Station on 21st August, 2020 between 11.00 am to 2.00 pm;

[c] shall not hamper the investigation in any manner nor shall directly or indirectly make any inducement, threat or promise to any witness so as to

dissuade them from disclosing such facts to the Court or to any Police Officer;

[d] shall at the time of execution of bond, furnish the address to the Investigating Officer and the Court concerned and shall not change the residence

till the final disposal of the case or till further orders;

[e] will not leave India without the permission of the Court and, if is holding a Passport, shall surrender the same before the trial Court immediately.

[f] It would be open to the Investigating Officer to file an application for remand, if he considers it just and proper and the concerned Magistrate

would decide it on merits.

[g] 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.

11.0 Rule is made absolute to the aforesaid extent qua applicant Nos.2 and 3.

12.0 The Registry is directed to communicate this order by fax or e-mail to the trial court.