

(2022) 07 GUJ CK 0094

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 12857 Of 2022

Chimanbhai Kuberbhai Solanki

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 25-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 143, 144, 147, 148, 149, 307, 323, 325, 504, 506(2)

Citation : (2022) 07 GUJ CK 0094

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Maunish T Pathak, Ronak Raval

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr.Maunish Pathak appearing on behalf of the applicant and learned Additional Public Prosecutor Mr.Ronak Raval on behalf of the respondent-State.

2. Rule. Learned APP waives service of rule on behalf of the respondent-State.

3. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant – original accused prays for being released on anticipatory bail in connection with FIR No.11192064220152 of 2022 registered with Dholka Rural Police Station, Ahmedabad on 6.6.2022 for offences punishable under Sections 143, 144, 147, 148, 149, 307, 325, 323, 504, 506(2) of IPC.

4. Learned Advocate Mr.Maunish Pathak for the applicant would submit that the applicant is falsely implicated and he has not committed any offence as alleged. Mr.Pathak would submit that the applicant is a retired Teacher and he was not having any weapon as alleged. Learned Advocate Mr.Pathak would, therefore,

submit that this Court may protect the present applicant by granting him anticipatory bail.

5. Learned Additional Public Prosecutor appearing on behalf of the respondent-State has vehemently opposed grant of anticipatory bail looking to the nature and gravity of the offence. Learned APP Mr.Raval would submit that having regard to the gravity of offence, releasing the present applicant on anticipatory bail may not be in the interest of the investigation.

6. Considering the submissions of the learned Advocate Mr.Pathak and further considering the submissions of the learned APP Mr.Raval as also the investigation papers, this Court has taken into consideration the following aspects:-

1. That while the applicant is attributed to his presence at the spot with a sword in his hand, it does not appear that the applicant had inflicted any blow. This is in spite of a very specific contention by the learned APP that the First Informant in his statement inter alia alleges that all the accused had assaulted the First Informant;

2. What appeals more to this Court is the fact that the present applicant was a retired teacher and is aged around 63 years old.

7. Having regard to the circumstances noted above, and considering the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors. reported in (2011)1 SCC 694, this Court is inclined to consider this application.

8. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR No.11192064220152 of 2022 registered with Dholka Rural Police Station, Ahmedabad on 6.6.2022, the applicant shall be released on anticipatory bail on furnishing a personal bond of Rs.10,000/- (Rupees Ten Thousand only) with one surety of like amount, on the following conditions that the applicant:

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

(b) shall remain present at the concerned Police Station on 29.07.2022 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 or till further orders;

(f) shall not leave India without the permission of the Court and, if having passports shall surrender the same before the Trial Court within a week;

(g) shall mark his presence once in every month for a period of next three months at the concerned Police Station;

9. Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicant to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. 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 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 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. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the applicant on bail. Rule is made absolute to the aforesaid extent. Direct service is permitted.