

**(2020) 08 GUJ CK 0032**

**In the Gujarat High Court**

**Case No : R/Criminal Misc.Application No. 9693 Of 2020**

Daulatsinh Dhirubhai Jadeja

APPELLANT

Vs

State Of Gujarat

RESPONDENT

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**Date of Decision : 05-08-2020**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 120(B), 406, 409, 465, 467, 468, 471

**Citation : (2020) 08 GUJ CK 0032**

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

**Bench : Single Bench**

**Advocate : Kruti M Shah, Dhruraj M Rana, Maithili Mehta**

**Final Decision : Allowed**

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**Judgement**

Dr. A. P. Thaker, J

[1] Heard Ms.Shah, learned advocate for the applicant, Ms.Mehta, learned Additional Public Prosecutor for the respondent â?" State and Mr.Rana,

learned advocate for the original complainant through Video Conferencing.

[2] RULE. Ms.Mehta, learned Additional Public Prosecutor waives service of notice of rule for the respondent â?" State.

[3] With the consent of learned advocates for both the sides, rule is fixed forthwith.

[4] By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant - original accused has prayed to

release him on anticipatory bail in case of his arrest in connection with the FIR registered as C.R No. 11201017200003 of 2020 before CID Crime

Border Zone Police Station, District: Kachchh - Bhuj for the offences under Sections 120(B), 406, 409, 465, 467, 468, 471 of the Indian Penal Code.

[5] Ms.Shah, learned advocate for the applicant has submitted that the applicant has not played any active role in the alleged crime and he was only the member of the committee and almost all the persons including president, secretary, other committee members and the bank officers are enlarged on bail. She has submitted that the charge- sheet has been filed before the concerned Court and the entire case is based on the documentary evidence and no specific allegation against the applicant. She has submitted that the Lavad Suit has already been filed for recovery of the amount. She has relied upon the decision of this Court in the case of Solanki Ravibhai Dipubhai and others Vs. State of Gujarat and others, (1992) 1 GLR 631. She has submitted that the stand of the applicant is that he has not received any monetary benefit and he has only signed the documents and if the amount has not been recovered, he is also liable to make the payment.

[6] Ms.Shah, learned advocate for the applicant has submitted that the nature of allegations are such for which custodial interrogation at this stage is not necessary. Besides the applicant will be available during the course of investigation and will not flee away from the justice. In view of the above, the applicant may be enlarged on anticipatory bail by imposing suitable conditions.

[7] Ms.Shah, 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. Learned advocate for the applicant further submits that upon filing of such application by the Investigating Agency, the right of applicant to oppose such application on merits may be kept open.

[8] Ms.Mehta, learned Additional Public Prosecutor appearing on behalf of the respondent-State has opposed grant of anticipatory bail on the grounds that considering the nature and gravity of the offence.

[9] Mr.Rana, learned advocate for the original complainant has submitted that the present applicant is a committee members and the committee members have passed the resolutions in his present and he is equally liable in the alleged offence. He has submitted that the applicant has signed the documents which is reflected by the Investigating Officer by filing the charge-sheet. He has submitted that at the time of passing the resolutions, in the

committee meeting the list of the farmers was prepared and the same was sent to the concerned Bank and the amount was withdrawn by the

president and secretary in the name of the farmers, but no such amount was paid to the farmers. According to him, the entire investigation clearly

suggests that the present applicant is also involved in the alleged crime and, therefore, he may not be enlarged on bail.

[9] Having 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 and the decision relied upon by learned advocate for the applicant, without discussing the evidence in detail, at this stage, I

am inclined to grant anticipatory bail to the applicant.

[10] This Court has considered following aspects;

(i) The charge-sheet has been filed;

(ii) The Lavad Suit has been filed for the recovery of the amount;

(iii) That other co-accused are enlarged on bail;

(iv) That the amount was withdrawn by the President and the Secretary;

(v) No any amount has been withdrawn by the applicant;

(vi) The entire prosecution case is based on the documentary evidence;

(vii) There is no chance of tampering with the evidence and influence the witness as the case is based on the documentary evidence.

[11] 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.,

reported at (1980) 2 SCC 665 and in the case of Sushila Aggarwal Vs. State (NCT of Delhi) reported in AIR 2020 SC 831.

[12] In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR registered as C.R

No. 11201017200003 of 2020 before CID Crime Border Zone Police Station, District: Kachchh - Bhuj, the applicant shall be released on 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

shall :

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

(b) remain present at concerned Police Station on 13.08.2020 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;

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

[14] 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 applicant is also permitted to intimate about this order to the concerned authorities through fax, email and/or any other suitable

electronic mode.