

(2021) 07 GUJ CK 0030

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 18720 Of 2020

Dharmendrasinh Ambalal Mahera

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 13-07-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 107, 306

Citation : (2021) 07 GUJ CK 0030

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Rajesh K Kanani, Dimple A Thaker, Moxa Thakker

Final Decision : Allowed

Judgement

A.S. Supehia, J

[1] Heard the learned advocates for the respective parties by video conferencing.

[2] By way of the present application filed under Section 438 of the Code of Criminal Procedure, 1973, the applicant-accused has prayed for bail in

connection with the FIR being C.R. No.11197035200741 OF 2020 registered with Desar Police Station, Dist. Vadodara for the offences punishable

under Section 306 of the Indian Penal Code, 1860.

[3] The case of the prosecution in brief is that : the FIR has been filed by brother of the deceased, inter alia, alleging that her sister Madhuben went

missing on 26.09.2020 from their residence at Udalpur, Charanvas, Taluka Desar, Dist. Vadodara, for which he along with other relatives searched

for her sister but could not locate her. It is further alleged that on the next day i.e. 27.09.2020, the found duppata and slippers of her sister near check-

dam of Kun River and on same day they filed a missing report at Desar Police Station, Dist. Vadodara. It is also alleged that on 28.09.2020, the

deadbody of her deceased sister Madhuben was found from Mahisgar River near Ramnagar. It is the case of the first informant that her sister was

earlier going for a job at the office of the applicant at Timba Road, Godhra, Panchmahal and as he was harassed and tortured by the applicant with a

view to keep sexual relation, her sister had left the job. It is also the case of the prosecution that the applicant even after that continued to harass her

sister on instagram and phone and as a result thereof, her sister committed suicide, for which instant the FIR has been lodged.

[4] Learned advocate for the applicant has submitted that the applicant there is unexplained delay of more than 25 days in lodging the FIR, which

creates serious doubts about the credibility and truthfulness of the version of the prosecution. It is submitted that the deceased " Madhuben was

doing a clerical job at the office of the applicant, who is a very reputed agent with Life Insurance Corporation of India. It is submitted that the

deceased worked only for a very short duration and had left the job on 03.11.2019, which is almost 10 months prior to the alleged incident, which is

allegedly took place on 26.09.2020.

[4.1] Learned advocate for the applicant has submitted that while short duration of employment of the deceased at the office of the applicant, she

came close to the wife of the applicant (who was also attending the office of the applicant) as well as other staff member and was treated like a

family member. It is submitted that on many occasions, the family of the applicant helped her financially as she was also pursuing her further studies

as well. Learned advocate has further submitted that there was absolutely no harassment from the applicant to deceased and it can be clearly

established from the fact that on almost all occasions after having left the job in November, 2019, it was she who had called the applicant and not

other way round. It is submitted that initially she was having her personal mobile number, which was discontinued from February, 2020 and thereafter

she she used to call from other mobile numbers. It is also submitted that the deceased had left the job in November, 2019 and the FIR is lodged in

October, 2020. Further, it is submitted that the applicant resides at Godhra, whereas the deceased was residing at Vadodara. It is also submitted that

there was not complaint or FIR for the alleged harassment ever filed nor there is any incident reported anywhere before.

[4.2] Learned advocate for the applicant has submitted that the story of the alleged harassment by the applicant is also falsified from the fact that

though she left the job in November, 2019, her father Rameshbhai had requested the applicant to sign a document as a witness in connection with a

lost the RC Book of his vehicle, which itself shows that in fact there were cordial relations even after the deceased left the job of the applicant. It is

submitted that in fact the deceased was forced to marry her own cousin Ajay Charan, for which she might have taken this drastic step of ending her

life and it appears that to avoid any possible implication of themselves and as a preventive step, the brother of the deceased has chosen to file the

present false FIR.

[4.3] Learned advocate for the applicant has submitted that the nature of allegations are such for which custodial interrogation of the applicant at this

stage is not necessary. He has further submitted that the applicant will keep herself available during the course of investigation, as well as in the trial

also and will not flee from justice.

[4.4] Learned advocate for the applicant, upon instructions, has submitted 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 her remand. He has further

submitted that upon filing of such application by the investigating agency, the right of the applicant accused to oppose such application on merits may

be kept open. Learned advocate, therefore, has submitted that considering the above facts, the applicant may be granted anticipatory bail.

[5] On the other hand, the learned Additional Public Prosecutor appearing on behalf of the respondentâ" State has opposed grant of anticipatory bail

looking to the nature and gravity of the offence. While placing reliance on the report of the Investigating Officer as well as statements of the

witnesses, the learned APP has submitted that the applicant is directly involved in the offence and, therefore, he may not be enlarged on anticipatory

bail.

[6] Learned advocate Ms.Dimple Thaker appearing on behalf of the first informant has submitted that the applicant is used to harass the deceased by

forcing to have physical relationship, even if she had left the job. She has further submitted that the applicant used to follow the deceased on

Instagram and in support of her submission, such Instagram chats are produced. Thus, she has submitted that the deceased had committed suicide due

to mental harassment on the part of the applicant and, therefore, the applicant may not be granted anticipatory bail.

[7] In response to the aforesaid submissions made by the learned APP as well as Ms.Thaker, learned advocate Mr.Kanani for the applicant has

submitted that the Instagram chats do not reveal any harassment, except the fact that there is no instigation which would suggest the deceased to

commit suicide. He has further submitted the ingredients, which are necessary for the offence under Section 306 of the IPC, are missing in the instant

case and the ingredients under Section 107 of the IPC also not satisfied in the present case and, therefore, it is urged that the applicant may be granted

anticipatory bail.

[8] Thus, on bare perusal of the report of the Investigating Officer and also statements of witnesses, it appears that it is the case of prosecution that

the deceased was harassed by the applicant while she was in service and thereafter also when she left the job the applicant had forced her and had

also followed her on Instagram. The Court, during the pendency of the application, had recorded that the prosecution has relied on the Instagram chats

in order to establish the charges levelled against the applicant. It is an established fact that the deceased had worked for very short period in the office

of the applicant and left the job on 03.11.2019. Prima facie, the investigation as well as the statements of witnesses, at this stage indicate that there is

no physical harassment meted out by the applicant to the deceased and only looking such aspects, the relationship with the deceased and applicant is

through Instagram. The investigation has not yet found that the applicant was forced the deceased to keep physical relationship.

[9] Having heard the learned advocates for the parties and perusing the material 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 applicant.

[10] This Court has considered following aspects;

- (a) The role attributed to the applicant;
- (b) There is delay in registering the FIR;
- (c) It appears that the deceased left the job of the applicant in the month of November, 2019 and the incident took place on 26.09.2020;
- (d) The applicant resides at Godhra, whereas the deceased was residing at Vadodara;
- (e) Prima facie it appears that even after leaving job by the deceased, the applicant has cordial relation with the deceased and her family members;
- (f) Prima facie it appears that as the deceased was forced to marry with her own cousin, she might have taken such drastic step of ending her life;
- (g) Prima facie, instagram chat or allegation levelled against the present applicant do not reveal that there is any abatement or instigation by the present applicant, which has left with no other alternate to the deceased but to end her life;
- (h) Considering the facts of the case, the custodial interrogation of the applicant at this stage is not necessary;

[11] This Court has also taken into consideration the law laid down by the Apex Court in the cases of Sushila Aggarwal vs. State (Nct of Delhi), AIR 2020 SC 831 and Siddharam Satlingappa Mhetre vs State of Maharashtra, A.I.R. 2011 S.C. 312.

[12] In the result, the present application is allowed. The applicant is ordered to be released on bail in the event of his arrest in connection with FIR

being C.R. No.11197035200741 OF 2020 registered with Desar Police Station, Dist. Vadodara on his executing a personal bond of Rs.10,000/-

(Rupees Ten Thousand Only) with one surety of like amount on the following conditions that he :

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) shall remain present at the concerned Police Station on 19.07.2021 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 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.

[13] Despite this order, it would be open for the investigating agency to apply to the competent Magistrate, for police remand of the applicant, if he

considers it proper and just and the Magistrate would decide it on merits. The applicant shall remain present before the concerned Magistrate on the

first date of hearing of such application and on all subsequent occasions, as may be directed by the concerned Magistrate. This would be sufficient to

treat the accused in the judicial custody for the purpose of entertaining the 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 concerned 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.

[14] At the trial, the concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.

[15] The application is allowed in the aforesaid terms. RULE is made absolute to the aforesaid extent. Registry is directed to send a copy of this order

to the concerned authority / court through Fax message, email and/or any other suitable electronic mode.

[16] Learned advocate for the applicant is also permitted to send a copy of this order to the concerned authority/court through Fax message, email

and/or any other suitable electronic mode.