

(2022) 07 GUJ CK 0095

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 12805 Of 2022

Dhirendrasinh Bhagubha Jadeja

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 376, 376(2)(n), 506(2)

Citation : (2022) 07 GUJ CK 0095

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : VH Kanara, Shivangi D Vyas, Ronak Raval

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Ms.Shivangi Vyas 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.11185002220472 of 2022 registered with Dwarka Police Station, District Devbhoomi Dwarka on 23.6.2022 for offences punishable under Sections 376, 376(2)(n), 506(2) of IPC.

4. Learned Advocate Ms.Shivangi Vyas for the applicant would submit that the nature of allegations are such for which custodial interrogation of the applicant at this stage is not necessary. Besides, the applicant is available during the course of investigation and will not flee from justice. In view of the above, the applicant may be granted anticipatory bail. Learned Advocate Ms.Shivangi Vyas 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 would further submit that upon filing of such application by the Investigating Agency, the right of applicant-accused to oppose such application on merits may be kept open.

5. This application has been vehemently opposed by learned Additional Public Prosecutor Mr. Raval appearing on behalf of the respondent-State, who would submit that looking to the nature and gravity of the offence the applicant may not be released on anticipatory bail by this Court.

6. Having heard the learned Advocates for the parties and having perused the investigation papers, following aspects are taken into consideration by this Court:

1. From the FIR as well as other investigation papers, it appears that the applicant and the First Informant were in a consensual relationship. It also appears that the relationship between the parties had continued from 2016 onwards;

2. It also appears that coming to know of the extra-marital affairs of the First Informant, her husband had along with children born out of the wedlock deserted her;

3. It also appears that the First Informant had voluntarily gone with the present applicant to various places and whereas the narration does not reflect any coercion on part of the applicant or any reluctance on part of the First Informant.

4. It also appears that the First Informant could not have insisted to get married with the present applicant more particularly the applicant herself being married till date and whereas it also does not appear that the alleged incident had occurred on account of any promise having been extended by the present applicant.

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.11185002220472 of 2022 registered with Dwarka Police Station, District Devbhoomi Dwarka on 23.6.2022, the applicant shall be released on anticipatory bail on furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five 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 28.07.2022 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.