

**(2022) 01 GUJ CK 0108**

**In the Gujarat High Court**

**Case No : R/Criminal Misc.Application No. 2079 Of 2022**

Diparam Khiyaram Chaudhary

APPELLANT

Vs

State Of Gujarat

RESPONDENT

**Date of Decision : 28-01-2022**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 438

Prevention Of Corruption Act, 1988 — Section 13(1)(A), 13(2)

Indian Penal Code, 1860 — Section 34, 109, 120(b), 409, 465, 466, 467, 471, 476(a)

**Citation : (2022) 01 GUJ CK 0108**

**Hon'ble Judges : Ilesh J. Vora, J**

**Bench : Single Bench**

**Advocate : Meena Vyas, Shruti Pathak**

**Final Decision : Allowed**

## Judgement

Ilesh J. Vora, J

1. Rule. Learned APP waives Rule for the Respondent State.

2. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant -accused has prayed for anticipatory

bail in connection with the FIR being C.R. No. 3 of 2019 registered with Valsad & Dang ACB Police Station, Dist. Valsad, for the offences under

Sections 13(1)(A), 13(2) of the Prevention of Corruption Act and Sections 409, 465, 466, 467, 471, 476(a), 120(b), 109 and 34 of Indian Penal Code,

1860.

3. Learned advocate for the applicant submits that the applicant is innocent and he has been falsely implicated in the alleged offence. There was delay

of 2 years in registering the FIR. The case is based on documentary evidence and custodial interrogation of the applicant is not essential for the

purpose of investigation.

4. Learned Additional Public Prosecutor appearing on behalf of the respondent â?" State has opposed grant of anticipatory bail stating inter alia that

the allegations against the applicant are grave and serious in nature and custodial interrogation is necessary for further investigation of the case.

5. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, it

appears that the applicant was a contractor for supplying the vehicles for execution of the work. It is submitted by Ms. Vyas that the applicant is

permanent resident of State of Rajasthan and having no direct connection with the alleged offence. On instructions, Ms. Vyas states that the applicant

is ready and willing to deposit 25 % amount i.e. Rs.1,75,000/- within reasonable time period as the co-accused has already deposited the remaining

amount. The other co-accused has already granted anticipatory bail against whom serious allegations are being made. In this background, custodial

interrogation of the applicant is not found to be essential for the purpose of investigating.

6. Considering the facts and circumstances of the case and the role attributed to the present applicant in the alleged offence, I find no reason to

decline pre-arrest bail to the applicant. 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. 3 of 2019 registered with Valsad & Dang ACB Police Station, Dist. Valsad on his executing a

personal bond of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of like amount on the 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 11.02.2022 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 their residence till the final disposal of the case till further orders;

(f) shall not leave India without the permission of the Trial 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;

(h) the applicant shall deposit Rs.1,75,000/- before the concerned authority/bank account/department within a period of six weeks from the receipt of this order.

6. 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.

7. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

8. Rule is made absolute to the aforesaid extent. Direct service is permitted.