

(2022) 07 GUJ CK 0024
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 12313 Of 2022

Divyarajsinh @ Divu Surendrasinh Jadeja	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 11-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Gujarat Prohibition. Act, 1949 — Section 65A, 65E, 81, 98(2), 116B<./li>

Citation : (2022) 07 GUJ CK 0024

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Kishan Prajapati, LB Dabhi

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr. Kishan Prajapati for learned Advocate Mr. Nipul H. Gondalia for the applicant and learned Additional Public Prosecutor Mr. L. B. Dabhi on behalf of the respondent-State.

2. Rule. Learned APP Mr. Dabhi 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 prays for being released on anticipatory bail in connection with FIR No. 11205032220618 of 2022 registered with Mundra Police Station, District Kutch West Bhuj on 15.06.2022 for offences punishable under Sections 65A, 65E, 81, 98(2) and 116B of the Prohibition Act.

4. The applicant having initially approached the learned Sessions Court, praying for the very selfsame relief of being released on anticipatory bail, having not succeeded before the learned Sessions Court, has approached this Court.

5. Learned Advocate for the applicant submits that the nature of allegations are

such for which custodial interrogation 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 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. He 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.

6. Learned Additional Public Prosecutor appearing on behalf of the respondent – State has opposed grant of anticipatory bail looking to the nature and gravity of the offence. It was, therefore, prayed that no discretion may be exercised in favour of the applicants.

7. Having heard the learned Advocates for the parties and considering the documents on record, the following aspects are considered by this Court:

[1] While it appears that the name of the present applicant had been mentioned in the FIR as an accused, it also appears that the same had been given by the co-accused from whose possession the prohibited liquor had been found.

[2] This Court is more concerned with the fact that the present applicant is shown to be a 21 year old boy, who is prosecuting his studies in the Surendranagar University and whereas from the documents which have been submitted by the learned Advocate Mr. Prajapati, it appears that the present applicant has very recently even appeared for his examination, more particularly, between 04.07.2022 to 07.07.2022.

8. In this view of the matter 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.

9. Having regard to the same and more particularly, considering that the present applicant does not have any antecedents, this Court is inclined to consider this application only on the above mentioned aspects. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to the FIR No. 11205032220618 of 2022 registered with Mundra Police Station, District Kutch West 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:

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

(b) shall remain present at the concerned Police Station on 18.07.2022 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 not indulge in any such activity herein after

(h) shall mark his presence once every month before the concerned Police Station for a period of six months.

10. 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.

11. 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. Document given by learned Advocate Mr. Prajapati are taken on record. Rule is made absolute to the aforesaid extent.

Direct service is permitted.