

(2022) 02 GUJ CK 0093

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 6077 Of 2020

Hirenbhai Hiteshbhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 21-02-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 143, 147, 148, 307, 323, 324, 365, 397, 452, 504, 506(2)

Citation : (2022) 02 GUJ CK 0093

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : N.D.Nanavati, Dharmesh R Patel, Krina Calla, Chirag Upadhyay

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. In this application under Section 438 of Code of Criminal Procedure, the applicant - Hiren Hiteshbhai Patel is seeking pre-arrest bail in connection with the FIR being C.R.No. 11188009200014 of 2020 registered with Modasa Town Police Station, Dist.Aravalli, for the offences punishable under Sections 307, 397, 452, 324, 323, 143, 147, 148, 504 and 506(2) of the Indian Penal Code, 1860.

2. The facts and circumstances giving rise to this application are that the complainant Miraj Desai and injured Anand Patel were serving as rector of Sunrise Hostel, situated at second floor, block D, Tattvam Arcade, city Modasa, Dist. Aravalli. On the day of incident i.e. on 25.01.2020, at around 22:50 hours, they were on duty at hostel and victim Anand had gone to ground floor of the hostel as there was nuisance of stray dogs, when he was at the first floor of the hostel, seven persons including the present applicant herein chased him, formed an unlawful assembly and being members of the unlawful assembly, with their common object, caused bodily injuries upon Anandbhai. The applicant herein armed with washbasin pipe, having metal bolt, assaulted the victim and caused

serious head injuries, whereas, accused Purveg @ Bunty Anil Patel snatched away the iron bracelet from the wrist of the victim and with the help of his belt, he assaulted the victim and thereafter, illegally entered into the office of the rector and looted cash amount of Rs.30,000/-. It is alleged that, the other accused have also assaulted the victim. The victim was literally stripped by the main accused. It is alleged that, when the first informant tried to intervene, the assailant Hiren Chaudhary (applicant herein) gave his introduction stating that he is Hiren Chaudhary and known person of village Dhansura and threatened that if they will file FIR, then be ready for dire consequences.

The whole incident captured in the CCTV camera installed at the hostel premises. The victim was taken to Satyam Multicare Hospital and Trauma Center for further treatment and was admitted as in patient for about 23 days as he suffered serious head injuries. In this background facts, the rector of the hostel, lodged the FIR for the offences as referred above. The statement of the victim in the form of dying declaration recorded by the Executive Magistrate, wherein, with the name of Hiren Patel, he narrated the incident. The investigating agency recovered recording of CCTV footage and identified the persons involved in the alleged offence. As per the prosecution case, seven persons are involved in the offence and out of seven, six persons were identified namely (1) Hiren Hitesh Chaudhary (Patel) (2) Vikalp @ Honey Vinodbhai Gajjar (3) Pranjal Dilipbhai Patel (4) Purveg @ Bunty Anilbhai Patel (5) Harmeet @ Babu Mukeshbhai Patel and (6) Amit @ Bablu Pravinbhai Pandya, whereas, the identity of one person is still not known to the agency.

3. The applicant Hiren Hitesh Patel moved an anticipatory bail application before the Sessions Court concerned, which came to be rejected by the Court observing that the offence alleged is serious and prima facie, reasonable ground to believe that the accused has committed an offence and for effective investigation, custodial interrogation of the applicant is necessary and therefore, no case is made out for anticipatory bail.

4. This Court has heard Mr. N.D.Nanavati, learned Senior Counsel assisted by Mr. Dharmesh Patel, learned counsel for the applicant, Mr. Chirag Upadhyay, learned counsel for the first informant and Ms. Krina Calla, learned APP for the respondent State.

5. It is the submission of learned Senior Counsel appearing for the applicant that, the impugned FIR is nothing, but the counter blast to the complaint filed by the applicant, which has not been registered by the police. Referring to the images of CCTV footage, submitted by the original informant, he urged that, the victim injured armed with plastic pipe, which facts raised the inference that there might be provocation by his side. He would further submit that, since last two years, the applicant herein protected by this Court and nothing untoward in between happened. The applicant herein cooperated with the investigation and his custodial interrogation is not necessary for further investigation. The applicant having roots in the society and having no any past antecedent of like nature. So

far case registered with Bayad Police Station against the applicant is concerned, it has been quashed by the High Court, whereas, case registered with Gandhinagar Police Station has been stayed by the High Court in quashing proceedings.

In the aforesaid contentions, learned Senior Counsel would submit that, case is made out for the exercise of power to grant anticipatory bail and application may be allowed by appropriate terms and conditions.

6. Mr. Chirag Upadhyay, learned counsel for the original complainant reiterating the facts of the affidavit filed by the complainant, vehemently opposed the application contending that, the anticipatory bail can be granted only in exceptional circumstances where the Court is of prima facie view that the applicant has falsely been roped in the crime. Referring to the facts of the FIR, he would submit that, the prima facie case against the applicant for the commission of alleged offence is made out, as at the scene of offence, he himself has disclosed his identity and based on CCTV footage, the investigating agency identified all six accused persons except one. He would further submit that, the applicant herein is headstrong person, having political influence and there is all chances to tamper with the evidence and witnesses. He would further submit that, the injured victim was admitted as in patient in the hospital for about 22 days, which facts show that how and in which manner, he was assaulted by the accused. On the point of investigation, he submitted that, due to protection granted by this Court, the investigation of the case has not proceeded further.

In the aforesaid contentions, learned counsel for the informant would submit that, considering the gravity of offence and prima facie case for the involvement of the applicant in the alleged offence and for the investigation of the case, no case is made out for granting anticipatory bail and therefore application may not be entertained.

7. Ms. Krina Calla, learned APP adopting the arguments advanced by learned counsel for the informant Mr. Upadhyay, she would submit that, the victim was brutally assaulted by the applicant and co-accused, which is evident from the medical case papers. She would submit that, as such no any complaint being received from the applicant herein and considering the role attributed to the applicant herein, for the effective investigation, his custodial interrogation is necessary and therefore, application is required to be rejected.

8. Before advertng to the issue raised by the respective parties and to examine the facts of the case, it may be desirable to refer to the settled legal principle with the subject, grant or refusal of anticipatory bail. Dealing with the provisions of Section 438 of the Cr.P.C, the Hon'ble Supreme Court in P.Chidambaram Vs. Directorate of Enforcement [2019 (9) SCC 24], has observed that, "ordinarily, arrest is a part of procedure of investigation to secure not only the presence of the accused, but several other purposes. Power under Section 438 is an extraordinary power and same has to be exercised sparingly. The privilege of pre-

arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the Court has to be properly exercised after application of mind as to the nature and gravity of accusation; possibility of fleeing from justice and other factors to decide whether it is a fit case for grant of anticipatory bail or not. It is further held by the Apex Court that, grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the Court must be circumspect while exercising such powers for grant of anticipatory bail and it should not be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

9. In the case of Sanjay Chandra Vs. CBI, [2012 (1) SCC 440], the Apex Court opined that, the grant or refusal of anticipatory bail lies within the discretion of the Court and is regulated to a large extent by the facts and circumstances of each particular case.

10. In light of the above settled legal principles and applying it to the facts of the present case, this court is of considered view that, the presence of the applicant and co-accused have not been denied by them and therefore, on the day of incident, their presence at the scene of offence is established. The whole incident has been captured in the CCTV footage and images of the footage produced by the informant, which is confirmed by the investigating agency. This Court is of prima facie view that, the applicant Hiren Patel and co-accused Purveg @ Bunty Anilbhai Patel have participated in the offence and their overtact in the alleged offence is established. The applicant Hiren Patel was armed with washbasin pipe which has metal bolt, whereas Purveg @ Bunty Anilbhai Patel used his belt and iron bracelet of the victim. The victim Anandbhai was literally stripped by the accused. It is evident from the medical case papers that, the victim was admitted in the hospital from 26.01.2020 to 18.02.2020. It is alleged against the accused Purveg @ Bunty that he looted cash amount of Rs.30,000/- from the office of rector. It emerges from the report of the Investigating Officer that, except one, all the accused have been identified from CCTV footage. The name of the applicant Hiren Hitesh Patel disclosed in the FIR itself. Investigation is still pending and as such there is no progress at all.

11. In view of the aforesaid discussions, it cannot be said that the accusation have been made against the applicant with the object of injuring or humiliating the applicant by arresting him or he has been falsely roped in the alleged offence. Record indicates that earlier i.e. prior to the FIR, two offences registered against the applicant, one with Bayad Police Station, Dist. Aravalli and second one was with Gandhinagar Police Station under Section 365 etc. of IPC. I find no merits in the contentions of the learned Senior Counsel that since last two years, the applicant granted interim protection and no useful purpose would be served to send him in jail. Merely granting protection for long time would not be a ground to extend the benefit of anticipatory bail to the accused, when the applicant is otherwise disentitled for anticipatory bail.

12. In light of what is stated herein above, considering the factors and parameters, necessary to be considered for adjudication of anticipatory bail under Section 438 of the Cr.P.C, without commenting on merits of the case, I find that it is not a fit case to grant anticipatory bail and accordingly, present application fails and is hereby rejected. Observations made in this order shall not affect the merits of the case in any manner and are strongly confined for disposal of the present application. Interim relief stands vacated.