

(2023) 11 GUJ CK 0032
In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Anticipatory Bail) No. 5364 Of 2022

??Hirenkumar Labhshankarbhai Mehta

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-11-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 114, 143, 147, 148, 149, 364A, 387, 506(2)
Arms Act, 1959 — Section 25(1b)(a)

Citation : (2023) 11 GUJ CK 0032

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Harshit S Tolia, BH Solanki, Shruti Pathak

Final Decision : Allowed

Judgement

Hasmukh D. Suthar, J

[1.0] By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant accused has prayed to release him on anticipatory bail in the event of his arrest in connection with the FIR being C.R. No.11190005220078 of 2022 dated 14.02.2022 registered with Paliyad Police Station, District Botad for the offences punishable under Sections 364A, 387, 506(2), 143, 147, 148, 149 and 114 of the Indian Penal Code, 1860 and section 25(1-b)(a) of the Arms Act.

[2.0] Learned advocate for the applicant submits that the applicant has nothing to do with the offence and the applicant has been falsely enroled in the offence. Present complainant is son of retired high ranking police officer and he is having checkered history and is known for fabricating documents and even during the pendency of the present application, present applicant has joined the investigation and from day one, the applicant is protected by the coordinate Bench by way of an interim order. The applicant has appeared before the investigating agency more than thrice. Further, even if the contents of the

complaint are taken at its face value, same appears to be hypothetical as it is next to impossible that in presence of high ranking government officials and that too in broad day light the victim can be kidnapped and that too from a circuit house. Hence, now nothing remains to be recovered or discovered from the present applicant and therefore, custodial interrogation at this stage is not necessary. Besides, the applicant, who is a government servant serving as Police Constable, cannot flee from justice and will be available during the course of investigation and will not flee from justice. In view of the above, the applicant may be granted anticipatory bail.

[3.0] 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. She has submitted that present applicant is police official and under the garb of his duty, he has tried to recover the personal amount by kidnapping the victim. She has further submitted that merely because the complainant has a checkered history cannot be a ground to grant anticipatory bail to the present applicant. Further, considering the statement of co-accused, prima facie involvement of the applicant is there. Further, there is money transaction and amount is also transferred and hence, as custodial interrogation of the applicant is required, she has requested to dismiss the present application.

[4.0] Having heard the learned advocate for the parties and perusing the investigation papers, it is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon'ble Apex Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided. I have considered the following aspects.

- (1) Offence is not punishable with life imprisonment or death penalty;
- (2) Applicant is protected by the coordinate Bench since 14.03.2022;
- (3) Applicant remained present before the Investigating Officer on 17.03.2022, 22.03.2022, 26.03.2022, 30.03.2022 and 08.04.2022 and thereafter, the applicant was informed that as and when his presence will be required, he will be called by the investigating agency;
- (4) Applicant is a government servant and has already joined the investigation;

(5) Complainant is having past antecedent and there are complaints against him wherein it is alleged that he is acquainted with police affairs;

(6) Right to seek remand of the applicant is kept open.

[5.0] Considering the aforesaid aspects and the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors. reported in (2011) 1 SCC 6941, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of Shri Gurubaksh Singh Sibbia & Ors. reported in (1980) 2 SCC 665 and also the decision in the case of Sushila Aggarwal v. State (NCT of Delhi) reported in (2020) 5 SCC 1, I am inclined to allow the present application.

[6.0] In the result, the present application is allowed by directing that in the event of applicant herein being arrested in connection with the FIR being C.R. No.11190005220078 of 2022 dated 14.02.2022 registered with Paliyad Police Station, District Botad, 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 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 10/11/2023 between 11.00 a.m. and 2.00 p.m. and the IO shall ensure that no unnecessary harassment or inconvenience is caused to the applicant;

(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 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;

[7.0] 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. 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.

[8.0] 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.

[9.0] Rule is made absolute to the aforesaid extent. Application is disposed of accordingly. Direct service is permitted.