

(2022) 06 GUJ CK 0003

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 9560 Of 2022

Iqbal Ibrahim Khira

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 01-06-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 114, 406, 420

Citation : (2022) 06 GUJ CK 0003

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Premal S Rachh, Maithili Mehata

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. Heard learned advocate Mr. Premal S. Rachh for the applicants.
2. Learned APP Ms. Maithili Mehta is present for the Respondent – State of Gujarat.
3. Rule. Learned APP Ms. Maithili Mehta waives service of notice of Rule on behalf of the Respondent – State of Gujarat.
4. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicants-accused have prayed for enlarging him on anticipatory bail in connection with the FIR being C.R. No.11202008220663 of 2022 registered with 'A' Division Police Station, District: Jamnagar for the offenses punishable under Sections 406, 420 and 114 of the Indian Penal Code.
5. Learned advocate for the applicants has submitted that the applicants are apprehending their arrest in connection to the aforesaid FIR and in this connection the earlier application filed by the applicant before the learned Sessions Court came to be dis-allowed. Learned advocate for the applicants has

submitted that the present FIR is counter blast to the complaint/application filed by the petitioner no.1 against the police personnel and complainant and therefore a false and frivolous complaint is created to pressurize the present applicants, and therefore, the present application may kindly be allowed.

6. Learned advocate for the applicant has further argued that in the present case there is two months delay in filing the FIR, and therefore, as per settled law, discretion may be exercised. He further submitted that the applicants will keep themselves available during the course of investigation and trial also and will not flee from justice.

7. Learned advocate for the applicants 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 further submits that upon filing of such application by the Investigating Agency, the right of applicants accused to oppose such application on merits may be kept open. Learned advocate, therefore, submitted that considering the above facts, the applicants may be granted anticipatory bail.

8. 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. He submitted that the investigation be continued.

9. Having heard the arguments advanced by the learned advocates for the parties and perused the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicants.

10. This Court has considered following aspects,

(a) as per catena of decisions of Hon'ble Supreme Court there are mainly two factors which are required to be considered by this court;

(i) prima facie case

(ii) requirement of accused for custodial interrogation.

Therefore, in the facts and circumstances of the present case, this court is inclined to consider the case of the applicants.

11. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sushila Aggarwal & Ors. Vs. State (NCT of Delhi)- Anr. reported in 2020 SCC Online SC 98 and in the case of Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors., reported at [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab, reported at (1980) 2 SCC 565.

11.1 This court has also considered the judgment in the case of Arnesh Kumar v. State of Bihar reported in (2014) 8 SCC 273, wherein the Hon'ble Apex Court has observed that whenever there is punishment of 7 years, then the court would be liberal to exercise the discretion. Further, by exercising the discretion under Section 438 Cr.P.C, the doors of remand by the Investigating Officer is open and therefore also this court is inclined to exercise powers under Section 438 of Cr.P.C.

12. In the result, the present application is allowed. The applicants are ordered to be released on anticipatory bail in the event of t h e i r arrest in connection with the aforesaid FIR , on executing a personal bond of Rs.10,000/- each with one surety of like amount each on the following conditions:

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

(b) shall remain present at concerned Police Station on 13.06.2022 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 till further orders;

(f) shall not leave India without the permission of the concerned trial court and if having passport shall deposit the same before the concerned 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 the remand application without being influenced of the observations made by this Court;

13. The applicants 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 applicants, 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.

14. At the trial, the concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.

15. Rule is made absolute. Direct service is permitted.