

(2020) 08 GUJ CK 0090
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 10677 Of 2020

Jagdipsing @ Kallu Fatesinh Tomar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 06-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Gujarat Prohibition Act, 1949 — Section 66(2), 65(a), 65(e), 81, 116B

Citation : (2020) 08 GUJ CK 0090

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : Sanjay Prajapati, L B Dabhi

Final Decision : Allowed

Judgement

Paresh Upadhyay, J

1. This is an application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973, in connection with C.R.No.11191004200395

of 2020 registered with Amraiwadi Police Station, Dist: Ahmedabad for the offences punishable under Sections 66(2), 65(a), 65(e), 116B and 81 of the

Prohibition Act.

2. Rule. Learned Additional Public Prosecutor waives service of notice of rule for the State.

3. Heard learned advocate for the applicant and learned Additional Public Prosecutor for the State through Video Conferencing.

4. Learned advocate for the applicant has submitted that, the applicant has not committed any offence. Without prejudice to this, it is further submitted

that, considering the nature of the offence, the applicant may be enlarged on anticipatory bail by imposing suitable conditions.

5. The learned advocate for the applicant has further submitted that, the applicant is ready and willing to abide by all the conditions, including imposition of conditions with regard to the powers of the Investigating Agency to file an application before the competent Court for his remand. He has further submitted that, upon filing of such application by the Investigating Agency, the right of the applicant to oppose such application on merits may be kept open.

6. On the other hand, learned APP has contested this application and has opposed the grant of anticipatory bail.

7. Having heard learned advocates for the respective parties and having considered the material on record and considering the role of the applicant in the offence in question, this Court finds that, this is the fit case to exercise the discretion to grant anticipatory bail to the applicant in exercise of powers under Section 438 of the Code of Criminal Procedure, 1973, on certain conditions.

8. Learned advocates for the respective parties do not press for reasons, so that it may not prejudice any of the parties, at the time of trial, however it is noted that, while passing this order, this Court has kept in view the law laid down by the Supreme Court of India in the case of Siddharam

Satlingappa Mhetre vs. State of Maharashtra, reported in [2011] 1 SCC 6941, wherein the Supreme Court has reiterated the law laid down by the

Constitutional Bench in the case of Shri Gurubaksh Singh Sibbia, reported in (1980) 2 SCC 665.

9. In view of above, the following order is passed.

9.1 This application is allowed by directing that, in the event of arrest of the applicant herein in connection with C.R.No.11191004200395 of 2020

registered with Amraiwadi Police Station, Dist: Ahmedabad, the applicant shall be released on bail on his furnishing a personal bond of Rs.10,000/-

(Rupees ten thousand only) with one surety of the like amount on the following conditions that he shall:

(a) co-operate with the investigation and make himself available for interrogation whenever required;

(b) not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/them

from disclosing such facts to the court or to any police officer;

(c) not obstruct or hamper the police investigation and not play mischief with the evidence collected or yet to be collected by the police;

(d) 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;

(e) it would be open to the Investigating Officer to file an application for remand if he considers it just and proper and the learned Magistrate would decide the same on merits;

9.2 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 rights of the accused to seek stay against an order of remand if,

ultimately granted, and the powers of the learned Magistrate to consider such a request in accordance with law.

9.3 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 the other conditions of this anticipatory bail order.

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

9.5 Rule is made absolute in above terms.