

(2022) 05 GUJ CK 0012

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 19008 Of 2021

Jagdishbhai Punjabhai OD

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 04-05-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 120B, 406, 409, 420, 467, 468, 471

Citation : (2022) 05 GUJ CK 0012

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : BH Solanki, Ronak Raval

Final Decision : Allowed

Judgement

A.S. Supehia, J

1. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant-accused has prayed for bail in connection with the FIR being C.R.No.I-11210060212461 of 2021 registered with Varachha Police Station, District Surat for the offences under Sections 406, 420, 409, 120B, 467, 468 and 471 of the Indian Penal Code, 1860.

2. Learned advocate for the applicant submits that the nature of allegations are such for which custodial interrogation of the applicant at this stage is not necessary. He further submits that the applicant will keep himself available during the course of investigation, as well as trial also and will not flee from justice.

3. 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 further submits that upon filing of such application by the investigating agency, the right of the applicant accused to

oppose such application on merits may be kept open. Learned advocate, therefore, submits that considering the above facts, the applicant may be granted bail.

3.1 Learned advocate for the applicant has submitted that pursuant to the order dated 26.10.2021, the applicant has already deposited an amount of Rs.2,00,000/- before the Trial Court.

4. On the other hand, the learned Additional Public Prosecutor appearing on behalf of the respondent- State has opposed grant of bail looking to the nature and gravity of the offence.

5. Having heard the learned advocates for the parties and perusing 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 bail to the applicant.

6. This Court has considered following aspects;

(i) The F.I.R. is registered on 18.07.2021 for the offence, which is alleged to have been taken place between 20.04.2021 to 28.04.2021;

(ii) Prima facie, though the offence is registered under Sections 406, 420, 409, 120B of the Indian Penal code, there is no allegation in the FIR, that any representation is made by the applicant to the complainant for receiving the money by luring him that it will be doubled within a period of one month.

(iii) Prima facie, it appears that nothing is coming on record to indicate that the applicant has to do anything with the creation of "P. Pravinkumar & Company", fake firm in the name of "P. Pravinkumar & Company" and the allegations prima facie are made against the co-accused, who have represented before the complainant in this regard;

(iv) No other antecedents are pointed out against the applicant;

(v) From the report submitted by the Investigating Officer, it appears that two persons; Nitin Limbachiya and Sanjay Parmar, have allegedly made a representation to lure the complainant.

(vi) Learned advocate for the applicant, under instructions, submitted that without prejudice, the applicant has already deposited an amount of Rs.2,00,000/- (Rupees Two Lakhs Only), as directed by this Court.

(vii) Learned Additional Public Prosecutor, under the instructions, of the Investigating Officer, is unable to bring on record any special circumstances against the applicant.

(ix) The co-accused have been enlarged on bail by this Court vide order dated 03.09.2021 passed in Criminal Misc. Application No.14908 of 2021 and orders dated 14.09.2021 passed in Criminal Misc. Application Nos.14202 of 2021, Criminal Misc. Application No.14198 of 2021 and order dated 21.04.2022 passed

in Criminal Misc. Application No.896 of 2022.

7. This Court has also taken into consideration the law laid down by the Apex Court in the cases of Sushila Aggarwal vs. State (Nct of Delhi), AIR 2020 SC 831 and Siddharam Satlingappa Mhetre vs State of Maharashtra, AIR 2011 SC 312.

8. In the result, the present application is allowed. The applicant is ordered to be released on bail in the event of his arrest in connection with FIR being C.R.No.I-11210060212461 of 2021 registered with Varachha Police Station, District Surat, on his executing 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 11.05.2022 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;

9. Despite this order, it would be open for the investigating agency to apply to the competent Magistrate, for police remand of the applicant, if he considers it proper and just and the Magistrate would decide if on merits. The applicant shall remain present before the concerned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the concerned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining the 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 concerned 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 bail order.

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

11. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent.

12 Registry is directed to send a copy of this order to the concerned authority/ court through Fax message, email and/or any other suitable electronic mode.

Direct Service is permitted.