

(2022) 10 GUJ CK 0057
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 18566, 18649 Of 2022

Jashuben Raisingbhai Vasava

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 10-10-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 323, 395, 504
Gujarat Police Act, 1951 — Section 135

Citation : (2022) 10 GUJ CK 0057

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Zubin F Bharda, Ronak Raval

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr. Zubin F. Bharda for the applicants and learned Additional Public Prosecutor Mr. Ronak Raval on behalf of the respondent-State.

2. Rule. Learned APP Mr. Raval waives service of Rule on behalf of the respondent-State.

3. By way of these applications under Section 438 of the Code of Criminal Procedure, 1973, the applicants pray for being released on anticipatory bail in connection with FIR being C.R. No. 11199050220888 of 2022 registered with Valiya Police Station, District Bharuch, on 04.09.2022 for offences punishable under Sections 395, 323 and 504 of the Indian Penal Code and Section 135 of the Gujarat Police Act.

4. Learned Advocate Mr. Bharda for the applicants would submit that the nature of allegations are such for which custodial interrogation of the applicants at this stage is not necessary. Besides, the applicants are available during the course of investigation and will not flee from justice. In view of the above, the applicants

may be granted anticipatory bail.

Learned Advocate Mr. Bharda for the applicants on instructions states that the applicants are 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 their remand. Learned Advocate would further submit 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.

5. These applications have been vehemently opposed by learned Additional Public Prosecutor Mr. Raval appearing on behalf of the respondent-State, who would submit that looking to the nature and gravity of the offence the applicants may not be released on anticipatory bail by this Court.

6. Having heard the learned Advocates for the parties and having perused the investigating papers as well as documents on record, the following relevant aspects are considered by this Court:

[1] That one of the persons named in the FIR as being a victim of the alleged assault one Hardikbhai, appears to be an accused in an FIR filed by one Ketanbhai Jashwantbhai Vasava, who is stated not to be a relative of the applicants and whereas in the said FIR it appears that the said Ketanbhai when he was being assaulted by Hardikbhai and other accused of the said FIR, had been rescued by the present applicants and their family members.

[2] It appears that the said FIR had been filed almost at the same time the present FIR has been filed and whereas it appears that while there may have been some incident, the allegation of commission of an offence punishable under Section 395 of the IPC, is prima facie not made out.

[3] It also appears that the allegation of assault, as against the present applicants are in the nature of giving fist and kick blows and whereas there is no other serious role attributed to the present applicants.

[4] It also appears that the applicants of Criminal Misc. Application No. 18566 of 2022, are both lady accused aged 46 years and 26 years respectively, and whereas applicants of Criminal Misc. Application No. 18649 of 2022, are all young persons aged in the range of 26-30 years.

[5] That the present applicants are not having any criminal antecedents.

7. In this view of the matter and considering the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors. reported in (2011)1 SCC 694, this Court is inclined to consider these applications.

8. In the result, the present applications are allowed by directing that in the event of applicants herein being arrested pursuant to the FIR being C.R. No. 11199050220888 of 2022 registered with Valiya Police Station, District Bharuch,

the applicants shall be released on bail on furnishing a personal bond of Rs.10,000/- (Rupees Ten Thousand only) each with one surety of like amount each, on the following conditions that the applicants :

- (a) shall cooperate with the investigation and make themselves available for interrogation whenever required;
- (b) shall remain present at the concerned Police Station on 12.10.2022 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 or till further orders;
- (f) shall not leave India without the permission of the Court and, if having passports shall surrender the same before the Trial Court within a week;
- (g) the applicants of Criminal Misc. Application No. 18649 of 2022 shall mark their presence at the concerned Police Station once in a month for a period of three months.

9. Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicants to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. 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.

10. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the applicants on bail. Rule is made absolute to the aforesaid extent.

Direct service is permitted.