

(2022) 08 GUJ CK 0016

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 15666 Of 2021

Jayeshgiri Pravingiri Goswami

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 02-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 34, 201, 406, 408, 409, 420, 465, 467, 471

Citation : (2022) 08 GUJ CK 0016

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : N D Nananati, L B Dabhi

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Senior Advocate Mr. N.D. Nanavati with learned Advocate Mr. Ruturaj Nanavati for learned Advocate Mr. Hiren M. Modi on behalf of the applicant and learned Additional Public Prosecutor Mr. L.B. Dabhi on behalf of the respondent-State.

2. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant prays for being released on anticipatory bail in connection with FIR being C.R. No. 11186007210089 of 2021 registered with Talala Police Station, District Gir-Somnath, on 08.03.2021 for offences punishable under Sections 406, 408, 409, 420, 465, 467, 471, 201 and 34 of the Indian Penal Code.

3. Learned Senior Advocate Mr. N.D. Nanavati on behalf of the applicant would submit that the allegation against the applicant is of having received an amount of Rs. 1,00,000/- transferred by the main accused one Shri R.V. Thumar, who later on committed suicide. Learned Senior Advocate would draw the attention of this Court to an order passed by the learned Co-ordinate Bench of this Court

dated 22.10.2021, whereby the learned Co-ordinate Bench, had been pleased to protect the present applicant on condition that the applicant would deposit the amount of Rs. 1,00,000/- within a period of ten days. Learned Senior Advocate would submit that such amount having been deposited by the present applicant, the interim relief has continued till date. Learned Senior Advocate would further draw the attention of this Court to an order dated 10.02.2022 passed by the learned Co-ordinate Bench of this Court in Criminal Misc. Application No. 19667 of 2021 in case of co-accused Kalubhai Sarmanbhai Ram, who was working as an in-charge TDO and whereas the allegation against the said co-accused of having received an amount of Rs. 15,00,000/-. Learned Senior Advocate would submit that inter alia on the voluntary statement by the said co-accused to deposit an amount of Rs. 15,00,000/-, the learned Co-ordinate Bench had considered the said application and whereas learned Senior Advocate would submit that the role attributed to the present applicant, in terms of the amount received, being much lesser, this Court also may release the present applicant on anticipatory bail on the ground of parity.

3.1 Learned Senior Advocate Mr. Nanavati for the applicant would submit that the nature of allegations are such for which custodial interrogation of the applicant at this stage is not necessary. Besides, the applicant is available during the course of investigation and will not flee from justice. In view of the above, the applicant may be granted anticipatory bail.

3.2 Learned Senior Advocate Mr. Nanavati 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. Learned Senior Advocate would further submit that upon filing of such application by the Investigating Agency, the right of applicant-accused to oppose such application on merits may be kept open.

4. This application has been vehemently opposed by learned Additional Public Prosecutor Mr. Dabhi appearing on behalf of the respondent-State submitting that the present applicant had played a vital role. Learned APP would submit that looking to the nature and gravity of the offence the applicant may not be released on anticipatory bail by this Court.

5. Having heard the learned Advocates for the parties and having perused the investigating papers as well as documents on record and considering the fact that co-accused has been released on anticipatory bail as also the fact that the present applicant has deposited the amount of Rs. 1,00,000/- before the Trial Court, and 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, without discussing the evidence in detail at this stage, this Court is inclined to consider this application.

6. In the result, the present application is allowed by directing that in the event

of applicant herein being arrested pursuant to the FIR being C.R. No. 11186007210089 of 2021 registered with Talala Police Station, District Gir-Somnath, 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:

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) shall remain present at the concerned Police Station on 08.08.2022 between 11:00 a.m. and 2:00 p.m.;
- (c) shall mark his presence at the concerned Police Station once in a month for a period of three months;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) 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.

7. Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicant to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. 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 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 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. 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. Rule is made absolute to the aforesaid extent.

Direct service is permitted.