

(2022) 07 GUJ CK 0067

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 12469 Of 2022

Jayswal Bipinbhai Dilipbhai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 19-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 70, 438
Gujarat Prohibition Act, 1949 — Section 65(a), 65(e), 81, 98(2), 116B
Indian Penal Code, 1860 — Section 279
Motor Vehicles Act, 1988 — Section 177, 188

Citation : (2022) 07 GUJ CK 0067

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Hemang S Bharwad, Kirtan H Mistry, Ronak Raval

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr. Kirtan H. Mistry on behalf of the applicant and learned Additional Public Prosecutor Mr. Ronak Raval on behalf of the respondent-State.

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

3. 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 No. 11188007200562 of 2020 registered with Meghraj Police Station, District Aravalli, on 17.09.2020 for offences punishable under Sections 65(a), 65(e), 116-B, 81 and 98(2) of the Gujarat Prohibition Act, under Section 279 of the Indian Penal Code and under Sections 177 and 184 of the Motor Vehicles Act.

4. Learned Advocate Mr. Mistry 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.

Learned Advocate Mr. Mistry 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 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.

5. This application has 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 applicant 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 when the FIR had been preferred, the present applicant had not been named as an accused. The present applicant is shown as an accused in the charge-sheet which was led by the Investigating Officer in the month of January, 2021.

[2] It appears that till now the Investigating Officer has not obtained warrant under Section 70 of the Code of Criminal Procedure against the present applicant from the concerned Court.

[3] It also appears that the present applicant had been arraigned as an accused in the charge-sheet on the basis of statement of a co-accused namely one Amratbhai @ Amro Bababhai Damor and whereas the said accused quotes another accused namely one Kiranbhai Kalubhai Patel as having told the said accused that the consignment of prohibited liquor was to be supplied to the present applicant.

[4] It also appears that the said co-accused Kiranbhai Kalubhai Patel has also not been arrested till date nor any warrant under Section 70 of the Cr.P.C. against the said co-accused having been obtained from the concerned Court.

[5] The present applicant being arraigned as an accused in one offence hereinbefore and in view of the fact that in case of co-accused who had been named in the FIR itself, having been released on anticipatory bail by the learned Co-ordinate Bench of this Court.

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 this application.

8. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to the FIR No. 11188007200562 of 2020 registered with Meghraj Police Station, District Aravalli, the applicant shall be released on bail on furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five 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 mark his presence at the concerned Police Station once in a month for a period of three months;

(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.

9. 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.

10. 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.