

(2023) 05 GUJ CK 0061

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 7512 Of 2023

Jigneshkumar Motibhai Desai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 12-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 294(B), 384, 506(2)
Gujarat Money Lenders Act, 2011 — Section 40, 42(A), 42(D)

Citation : (2023) 05 GUJ CK 0061

Hon'ble Judges : M. R. Mengdey, J

Bench : Single Bench

Advocate : Kishan R Chakwawala, RM Chakwawalam, Utkarsh Sharma

Final Decision : Allowed

Judgement

M. R. Mengdey, J

1. Heard learned Advocate Mr. Pratik Y. Jasani for the Applicant.
2. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant-accused has prayed for enlarging him on anticipatory bail in connection with the FIR being C .R. No. 1 1 1 9 1 0 0 8 2 3 0 1 3 3 / 2 0 2 3 registered with Chandkheda Police Station, Ahmedabad for the offenses punishable under Sections 384, 294(B), 506(2) of the Indian Penal Code and Section 40, 42(A) and 42(D) of the Gujarat Money Lenders Act.
3. Learned Advocate for the Applicant has submitted that the Applicant is apprehending his arrest in connection the aforesaid FIR and in this connection the earlier application filed by the Applicant before the learned Sessions Court came to be dis-allowed. It is submitted that the present Application is an of suit of the matrimonial dispute between the first informant and the sister of the present Applicant. The Applicant had financially helped the first informant he being the husband of his sister. He therefore submitted that the present FIR

being an afterthought. He, therefore, submitted that the present application may be allowed.

4. 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 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. Learned advocate, therefore, submitted that considering the above facts, the applicant may be granted anticipatory bail.

5. Learned Additional Public Prosecutor appearing on behalf of the respondent – State has opposed grant of anticipatory bail looking to the nature and gravity of the offence. He therefore submitted that the present Application may be dismissed.

6. Having heard the arguments advanced by 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, it appears that the first informant happens to be the brother-in-law (banevi) and there were some matrimonial disputes going on between the sister of the present Applicant and the first informant. It also appears from the record that the first informant has lodged FIR against all the persons from whom he had borrowed money. Considering the same, the present Application deserves to be allowed.

7. This Court has considered following aspects,

(a) as per catena of decisions of Hon'ble Supreme Court there are mainly two factors which are required to be considered by this court;

(i) prima facie case

(ii) requirement of accused for custodial interrogation.

Therefore, in the facts and circumstances of the present case, this court is inclined to consider the case of the applicant.

8. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors., reported at [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab, reported at (1980) 2 SCC 565. Further, this Court has also taken into consideration the ratio laid down in the case of Sushila Aggarwal and Ors. v. State (NCT of Delhi) and Anr. in Special Leave Petition No. 7281-7282/2017 dated 29.01.2020.

8.1 This court has also considered the judgment in the case of Arnesh Kumar v. State of Bihar reported in (2014) 8 SCC 273, wherein the Hon'ble Apex Court has

observe that whenever there is punishment of 7 years, then the court would be liberal to exercise the discretion. Further, by exercising the discretion under Section 438 Cr.P.C, the doors of remand by the Investigating Officer is open and therefore also this court is inclined to exercise powers under Section 438 of Cr.P.C.

9. In the result, the present application is allowed. The applicant is ordered to be released on anticipatory bail in the event of his arrest in connection with a F I R 11191008230133 / 2023 registered with Chandkheda Police Station, Ahmedabad for the offence punishable under Sections 384, 294(B), 506(2) of the Indian Penal Code and Section 40, 42 (A) and 42 (D) of the Gujarat Money Lenders Act on executing 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 available for interrogation whenever required;

(b) shall remain present at concerned Police Station on 19.5.2023 between 12.00 Noon 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; and

(g) it would be open to the Investigating Officer to file an application for remand if he considers it proper and just and the learned Magistrate would decide the remand application without being influenced of the observations made by this Court;

10. 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.

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

12. Rule is made absolute to the aforesaid extent. Direct service is permitted.