

(2020) 01 GUJ CK 0206

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 21653 Of 2019

Kamleshbhai Ishwarbhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 13-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 114, 120(B), 406, 420, 465, 467, 468, 471

Citation : (2020) 01 GUJ CK 0206

Hon'ble Judges : Vipul M. Pancholi, J

Bench : Single Bench

Advocate : Manan A Shah, Hardik A Dave, HK Patel

Final Decision : Allowed

Judgement

Vipul M. Pancholi, J

1. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant has prayed for anticipatory

bail in connection with the FIR being C.R. No. 51/2019 registered with Mahuva Police Station for the offenses punishable under Sections 406,

420, 465, 467, 468, 471, 120(B) and 114 of the Indian Penal Code.

2. Learned advocate appearing for the applicant submitted that for the alleged transaction, which had taken place during the period between 1989

2012, FIR is lodged on 16.10.2019 and thus, there is gross delay and no explanation has been given for such delay. He submitted that the case is

triable by the Court of Magistrate and the case is based on documentary evidence, which are already collected by the investigating agency. He

submitted that the nature of allegations are such for which custodial interrogation at this stage is not necessary. He further submits that the applicant

will keep himself available during the course of investigation, 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 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.

4. Learned advocate, Mr. Dave appearing for the original complainant has vehemently opposed this application. He has referred to the averments

made in the affidavit filed by the complainant, copy of which is placed on record at Page No.33 of the compilation of Criminal Misc. Application

No.21087/2019. Learned advocate for the applicant has also referred to the documents annexed with the said affidavit and, thereafter, it is contended

that when the applicant has forged the documents, on the basis of which, revenue entry is made in the revenue record, this Court may not exercise the discretion in favour of the applicant.

5. Learned Additional Public Prosecutor, Mr. Patel appearing on behalf of the respondent "State has opposed grant of anticipatory bail looking to

the nature and gravity of the offence and supported the submissions canvassed by learned advocate appearing for the original complainant.

6. 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

anticipatory bail to the applicant.

7. This Court has considered following aspects,

(a) for the alleged transaction which had taken place between 1989-2012, FIR in question is lodged on 16.10.2019. Thus there is gross delay of more than 30 years in lodging the FIR;

(b) the case of the prosecution rests on documentary evidence and all documents are in possession of the investigating agency and, hence, custodial interrogation of the applicant is not required;

(c) entry, which was mutated on the basis of the forged document, is already cancelled by the Collector i.e. the revenue authority and, therefore, no loss is caused to the complainant at present.

In view of the submissions canvassed by learned advocates appearing for the parties, this Court is of the view that the custodial interrogation of the applicant is not required.

Hence, the present application deserves to be allowed.

8. This Court has also taken into consideration the law laid down by the Honâ??ble Apex Court in the case of Siddharam Satlingappa Mhetre Vs.

State of Maharashtra and Ors., reported at [2011] 1 SCC 694, wherein the Honâ??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.

9. 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 a FIR

being C.R. No. Iâ?"51/2019 registered with Mahuva Police Station on his executing a personal bond of Rs.10,000/Â (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 concerned Police Station on 20.01.2020 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; 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 it on merits;

10. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicant. 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.