

(2022) 07 GUJ CK 0009
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 12015 Of 2022

Kunjwati @ Shreta Bholiram

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Immoral Traffic (Prevention) Act, 1956 — Section 3, 4, 5, 7
Indian Penal Code, 1860 — Section 370(a)(2)

Citation : (2022) 07 GUJ CK 0009

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Arjunsingh B Chauhan, LB Dabhi

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr. Arjunsingh B. Chauhan on behalf of the applicant and learned APP Mr. L. B. Dabhi on behalf of the respondent-State.

2. Rule. Learned APP Mr. Dabhi 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. 11210004221357 of 2022 registered with Amroli Police Station, Dist. Surat on 06.06.2022 for offences punishable under Sections 3, 4, 5, 7 of the Immoral Traffic (Prevention) Act and under Section 370(a)(2) of the Indian Penal Code.

4. Learned Advocate Mr. Chauhan for the applicant submits that the nature of allegations are such for which custodial interrogation 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 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 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. The applicant having initially approached the learned Sessions Court, praying for the very selfsame relief of being released on anticipatory bail, having not succeeded before the learned Sessions Court, has approached this Court.

6. 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. It was, therefore, prayed that no discretion may be exercised in favour of the applicants.

7. Having heard the learned Advocates for the respective parties and perused the record, this Court has appreciated the following pertinent aspects.

[1] That the applicant was not found at the place of the alleged offence.

[2] The allegation being that the applicant was running the business in question whereas the case of the applicant being that the applicant had already leased out the property to a third person.

[3] The fact that the maximum punishment imposable for the offence under the Immoral Traffic (Prevention) Act is three years and whereas

[4] It also appears that there are no averments in support of an allegation under Section 370(a)(2) of the Indian Penal Code.

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 in [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 in (1980) 2 SCC 565. This Court has also

taken into consideration the recent decision of the Apex Court in the case of Sushila Aggarwal and others Vs. State (NCT of Delhi) and another reported in (2020) 5 SCC 01.

9. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to the FIR No. 11210004221357 of 2022 registered with Amroli Police Station, Dist. Surat Mandvi Marine Police Station, District Kutch-Bhuj, 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 11.07.2022 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.

10. 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.

11. 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.