

(2020) 07 GUJ CK 0058

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9328 Of 2020

Laljibhai Mohanbhai Chauhan

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 21-07-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 363, 366

Citation : (2020) 07 GUJ CK 0058

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : Chintan K Gandhi, Ronak Raval

Final Decision : Allowed

Judgement

Ashutosh J. Shastri, J

1.0 Present application is filed under Section 438 of the Code of Criminal Procedure seeking Anticipatory Bail as the applicant is apprehending arrest

in connection F.I.R. bearing I-C.R.No.48 of 2019 registered with Datha Police Station, Bhavnagar for the alleged offences punishable under Sections

363 and 366 of the Indian Penal Code.

2.0 Heard, learned advocate for the applicant as well as learned Additional Public Prosecutor Mr.J.K.Shah.

3.0 Mr.Chintan Gandhi, learned advocate for the applicant, has submitted that the applicant is an innocent person and has wrongly been arraigned in

the prosecution. On the contrary, due to love and affection, both the applicant and the daughter of the complainant, with consent, have eloped, since

the parents were not cooperating and there is no offence as alleged is committed by the applicant. It has been pointed out that on the contrary, the

daughter of the complainant, who is aged about 17 years and 8 months, has also filed an affidavit stating that she on her own has gone with the

applicant and in fact, on 4.3.2020 at Surat, they both have actually married as per Hindu rites and rituals and as such, no offence can be said to have

been committed. Be that as it may, the applicant is ready and willing to cooperate with the investigation and would like to abide by any of the

conditions which this Court may deem fit to impose. In view of all these circumstances, a request is made to grant anticipatory bail.

4.0 As against this, Mr.J.K.Shah, learned APP, has submitted that the learned Sessions Judge has considered every material and thereafter, has not

exercised the discretion. When that be so, considering the fact that yet the investigation is not over, the discretion may not be exercised. However,

looking to the fact that both have actually married and to that effect, a document is attached in the form of affidavit reflecting on page-21 of the

application compilation, the learned APP has left it to the discretion of the Court.

5.0 Having regard to the facts and circumstances of the case and having gone through overall material on record, prima facie, it appears from the

document attached to the application that both have actually married and there is a consent specifically given by the girl which is reflecting on page-21

of the application compilation and further, from the assertion, it does not transpire that any force or inducement is made by the applicant. As a result of

this, the Court is inclined to consider the request of the applicant.

6.0 This Court has also taken into consideration the law laid down by the Apex Court in the case of Siddharam Satlingappa Mhetre v. State of

Maharashtra & Ors. reported in [2011] 1 SCC 694 ,wherein, the Apex Court reiterated the law laid down by the Constitutional Bench in the case of

Shri Gurubaksh Singh Sibbia & Ors. reported in [1980] 2 SCC 565.

7.0 Learned Counsel for the parties do not press for further reasoned order.

8.0 In the result, this application is allowed. It is directed that, in the event, the applicant herein is arrested pursuant to F.I.R. bearing I- C.R.No.48 of

2019 registered with Datha Police Station, Bhavnagar, the applicant shall be released on bail on furnishing a bond of Rs.10,000/- (Rupees Ten

Thousand only) with one surety of like amount on 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 24th July,2020 between 11.00 am to 2.00 pm;

[c] shall not hamper the investigation in any manner nor shall directly or indirectly make any inducement, threat or promise to any witness so as to

dissuade them from disclosing such facts to the Court or to any Police Officer;

[d] shall at the time of execution of bond, furnish the address to the Investigating Officer and the Court concerned and shall not change the residence

till the final disposal of the case or till further orders;

[e] will not leave India without the permission of the Court and, if is holding a Passport, shall surrender the same before the trial Court immediately.

[f] It would be open to the Investigating Officer to file an application for remand, if h considers it just and proper and the concerned Magistrate would

decide it on merits.

[g] 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.

9.0 Rule is made absolute to the aforesaid extent.

10.0 The Registry is directed to communicate this order by fax or e-mail to the trial court.