

(2022) 04 GUJ CK 0050

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 3776 Of 2022

Laxmiben Udaylal Khatik

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 13-04-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 114, 306, 323, 498A, 504
Dowry Prohibition Act, 1961 — Section 3, 7

Citation : (2022) 04 GUJ CK 0050

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Parthiv B Shah, Ronak Raval

Final Decision : Allowed

Judgement

A.S. Supehia, J

[1] Heard the learned advocates for the respective.

[2] By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicants-accused have prayed for bail in connection with the FIR being C.R.No.Part-A 11196013210697of 2021 registered with Sama Police Station, Vadodara City, Dist. Vadodara for the offences under Sections 323, 504, 306, 498A and 114 of the Indian Penal Code, 1860 and under Sections 3 and 7 of the Dowry Prohibition Act.

[3] Learned advocate for the applicants submits that the nature of allegations are such for which custodial interrogation of the applicants at this stage is not necessary. He further submits that the applicants will keep themselves available during the course of investigation, as well as trial also and will not flee from justice.

[4] Learned advocate for the applicants, on instructions, states that the applicants are 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 submits that upon filing of such application by the investigating agency, the rights of the applicants accused to oppose such application on merits may be kept open. Learned advocate, therefore, submits that considering the above facts, the applicants may be granted bail.

[5] On the other hand, the learned Additional Public Prosecutor appearing on behalf of the respondent- State has opposed grant of bail looking to the nature and gravity of the offence.

[6] This Court has perused the investigation papers as well as the report of the Investigating Officer, prima facie, reveals that the entire allegations are against the husband and the deceased has committed suicide because of the incident, which has occurred on 12.12.2021. The Investigating Officer has accordingly collected the evidence against the accused no.1-husband with regard to usage of abusive language in the incident, which had occurred on that day. The same is sent to the FSL.

[7] 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 bail to the applicant.

[8] This Court has considered following aspects;

(a) that the report of the Investigating Officer, prima facie, reveals that the entire allegations are against the husband;

(b) The Investigating Officer has accordingly collected the evidence against the accused no.1-husband with regard to usage of abusive language on the incident; looking to the over all facts and circumstances of the present case, I am inclined to consider the case of the applicants.

(c) Prima facie considering the facts of the case, the custodial interrogation of the applicants is not necessary at this stage;

[9] This Court has also taken into consideration the law laid down by the Apex Court in the cases of Sushila Aggarwal vs. State (Nct of Delhi), AIR 2020 SC 831 and Siddharam Satlingappa Mhetre vs State of Maharashtra, AIR 2011 SC 312.

[10] In the result, the present application is allowed. The applicants are ordered to be released on bail in the event of their arrest in connection with FIR being C.R.No.Part-A 11196013210697of 2021 registered with Sama Police Station, Vadodara City, District Vadodara on their executing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) EACH with one surety of like amount on the following conditions that they :

(a) shall cooperate with the investigation and make themselves available for interrogation whenever required;

(b) shall remain present at the concerned Police Station on 21.04.2022 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 addresses to the investigating officer and the court concerned and shall not change their 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.

[11] Despite this order, it would be open for the investigating agency to apply to the competent Magistrate, for police remand of the applicants, if he considers it proper and just and the Magistrate would decide if on merits. The applicants shall remain present before the concerned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the concerned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining the 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 concerned Magistrate to consider such a request in accordance with law. It is clarified that the applicants, 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 bail order.

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

[13] The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent. Direct service is permitted.