

(2023) 03 GUJ CK 0055

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 1134, 1149 Of 2023

Lilabhai Shamalabhai Thakor

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 13-03-2023

Acts Referred:

Indian Penal Code, 1860 — Section 143, 147, 148, 149, 294(b), 326, 324, 323, 504, 506(2)

Gujarat Police Act, 1951 — Section 135

Citation : (2023) 03 GUJ CK 0055

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Jemini S Patel, LB Dabhi, Maithili Mehta

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. As both the applications are arising out of same FIR, they have been heard together and disposed of by way of this common order.

2. Apprehending the arrest, the applicants herein by way of the present successive applications under Section 438 of the Code of Criminal Procedure, 1973, have prayed for anticipatory bail in connection with the FIR being C.R. No.I-11217027211241 of 2021 registered with Radhanpur Police Station, District: Patan for the offences under Sections 143, 147, 148, 149, 326, 324, 323, 504, 294(b) and 506(2) of IPC and Section 135 of the Gujarat Police Act.

3. Ms. Jemini Patel, learned advocate for the applicants would submits that the co-accused have been acquitted by the Court concerned as parties have settled their dispute amicably. So far role of the present applicants is concerned, the complainant Amarshibhai Thakor has not supported the case of prosecution and he has also filed affidavit stating inter alia, that due to compromise arrived at between the parties, he has no objection if bail is granted to the present

applicants. In such circumstances, she prays that, considering the subsequent development as referred above, these applications may be allowed by exercising judicial discretion in favour of the applicants.

4. Learned Additional Public Prosecutors appearing on behalf of the respondent-State have vehemently opposed grant of anticipatory bail mainly on the ground that the applicants herein have assaulted the persons named in the FIR and therefore, considering the role attributed to the present applicants, no case is made out for exercising judicial discretion in favour of the applicants.

5. Having heard the learned advocates for the respective parties and perusing the material placed on record and taking into consideration the facts of the case, it appears that accused no.3 to 5 against whom charge-sheet was filed, have been acquitted by the Court concerned (C.C. No.501 of 2022). Prima-facie, it appears that, the parties have settled their dispute out of the Court and therefore, they have not supported the case of prosecution. In such circumstances, considering the subsequent development, the present applications are maintainable and considering the fact of compromise, this Court is of the view that the matters deserve consideration.

6. Considering the facts and circumstances of the case and the role attributed to the present applicants in the alleged offence, I find no reason to decline pre-arrest bail to the applicants. In the result, the present applications are allowed. The applicants are ordered to be released on bail in the event of their arrest in connection with a FIR being C.R. No.I-11217027211241 of 2021 registered with Radhanpur Police Station, District: Patan 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:

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

(b) shall remain present at concerned Police Station on 20.03.2023 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 their residence till the final disposal of the case till further orders;

(f) shall not leave India without the permission of the Trial Court and if having passport shall deposit the same before the 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;

7. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicants. The applicants 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 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 anticipatory bail order.

8. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

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