

(2022) 03 GUJ CK 0078
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 22672 Of 2021

Mahavirsinh Ajitsinh Chauhan

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 15-03-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 114, 294(b), 312, 323, 354(a), 376, 376(2)(H),
377, 406, 506(2)

Citation : (2022) 03 GUJ CK 0078

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Anvesh V Vyas, Darshit H Raval, N V Raval, Nitin T Gandhi, Krina Calla

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant -accused has prayed for anticipatory bail in connection with the FIR being C.R. No. 11191030210071 of 2021 registered with Mahila Police Station (West) Dist.: Ahmedabad, for the offences punishable under Sections 376, 376(2)(H), 377, 406, 506(2), 312 and 114 of IPC.

2. Learned advocate for the applicant submits that the applicant is innocent and he has been falsely implicated in the alleged offence as he is the friend of principal accused and custodial interrogation of the applicant is not essential for the purpose of investigation.

3. Mr. Rohan Amin, learned counsel appearing for the original complainant opposed the bail application by contending that considering the seriousness of the charges, discretion may not be exercised in favour of the applicant.

4. Learned Additional Public Prosecutor appearing on behalf of the respondent –

State has opposed grant of anticipatory bail stating inter alia that the allegations against the applicant are grave and serious in nature and custodial interrogation is necessary for further investigation of the case.

5. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, it appears that serious allegations being alleged against the principal accused Ronaksinh Gohil and he has been granted anticipatory bail by this Court, wherein, this Court in paras 2, 4, 6 and 18 has observed thus:-

"2. Brief facts giving rise to present application are that, the applicant and victim met first time in June, 2018, through common friend at Ahmedabad. They exchanged their cell numbers. It was proposed by the applicant herein to the victim to give post in the political party and handsome salary. Based on the proposal, victim used to attend the office of the applicant herein. It is alleged that the applicant herein though married person, introduced himself as unmarried. Victim was given a post of President, Women Wings of Ahmedabad of political party as referred in the FIR. The victim was taken to Surat on 08.06.2018 by the applicant and while they were traveling in a sleeper coach, the applicant promised her to marry, as a result of which, they indulged in sexual act. It is alleged that on 16.07.2018, when victim was at the office of the applicant, they again indulged in the sexual acts and applicant herein clicked her personal photographs. It is further alleged that on 26.09.2018, at the event of inauguration of the office at Ahmedabad, she came to know that the applicant is married person, however, the applicant herein win over the trust of the victim saying that he will give divorce to his wife and then, he would marry her. Based on the promise during the period from 29.06.2018 to 03.11.2018, she was taken to different hotels at Ahmedabad, where they were indulged in the physical relationship. The victim got pregnant. On 06.07.2019, the applicant and his friend, co-accused, forced her to abort the child, otherwise, they will circulate her personal photographs on social media and accordingly, at the private clinic, abortion was being carried out. On 11.07.2019, the victim and applicant and other friends with family went to Saputara Hill Station, where, she was forced to indulge in physical relationship and thereafter, on 23.02.2020, when she was taken to Mumbai. On 23.02.2020, she came to know that she having got pregnancy and again, the applicant and his accomplice forced her to abort the child. The applicant herein assured the victim that after the election of 2022, he would marry with her. Parties have opened their bank account jointly. It is alleged that on 05.06.2021, the victim was called at the office of the applicant herein where she was humiliated by the applicant and his friends and suffered injuries due to altercations took place at the office. The victim lodged an FIR under Section 354(a), 323, 294(b), 506(2), 114 of IPC with Sola High Court Police Station. Thereafter they were separated and on 03.09.2021, the applicant herein deposited Rs.50,000/- in her account.

In the aforesaid facts, the victim aged about 31 years old, lodged an FIR alleging

that, on the false promise of marriage and by intimidation, coercion, she was deceived by the applicant, as a result, she indulged in the physical relationship with the applicant accused and thus, FIR is being registered to the offences of rape, unnatural sex, criminal intimidation and breach of trust.

4. Learned Senior counsel Mr. N.D. Nanavati, submitted that the allegations made in the FIR are false, frivolous and with malafide intention, the FIR is being lodge by the victim; referring to the content of the FIR, he submitted that, the alleged incident took place in the month of June, 2018, whereas, the FIR came to be registered on 22.12.2021 i.e after about two and half years, for which, no any reasonable explanation being offered by the victim; that on 29.06.2018, the victim was came to know that the applicant herein is married person, thereafter also, she was remained in the company of the applicant herein; that on 05.06.2021, when she went to the police station for lodging an FIR, under Section 354(a), 323, etc. of IPC against the applicant, she did not disclose the alleged offence of rape etc, which conduct shows that the allegations are false and frivolous having been alleged with oblique motive; that on 03.09.2021, she received an amount of Rs.50,000/- from the applicant, which itself shows that, the victim having mind set to extort money from the applicant, for which, the applicant herein filed a complaint before the police; that the applicant herein cooperated in the investigation and his mobile phone and its data have been seized and recovered by the police; that applicant is heading a post in the political party and therefore, to humiliate and damage his reputation, the FIR is being lodged.

6. Mr. N.T. Gandhi, learned counsel for the complainant victim, reiterating the contents of the affidavit filed by the victim, contended that the applicant herein being a married person, gave false promise of marriage, obtained the consent and indulged in the sexual acts with the victim and thereafter, gave her threats to circulate her private photographs, compelled her to maintain physical relationship on various occasions. He further submitted that, when the victim got pregnancy, the applicant and co-accused forced her to abort the child. He further submitted that the applicant herein being a head of political out fit, he is head strong person and has misused the bank account of the victim for doing his business of converting black money into official transactions for which, inquiry is pending with police authorities and therefore, it is not a case to grant anticipatory bail. He would submit that the offence alleged is grave, for which, punishment is life imprisonment and considering the background facts of the accused, there are chances of tempering with the evidence and threat to the witnesses as well as to the victim. He also point out that investigation is at the crucial stage and for effective investigation, his custodial interrogation is also necessary.

15. Let us now consider these principles in the context of the present case. If we read the contents of the FIR, it emerges that from June, 2018 to 23.02.2020, parties were in relationship and indulged in the sexual acts. It is pertinent to

note that on 29.06.2018, she came to know that the applicant is married person, however, since then, she continued with the company of the applicant herein and maintained sexual relationship. From the reading of the FIR dated 05.06.2021, registered with Sola High Court Police Station, for the offences punishment under Section 354(a) etc., it would appear that, she did not disclose that under the false promise of marriage, he made representation deliberately to illicit her consent without having intention or inclination to marry her as well as facts about the threat by the applicant to circulate her photographs on social media. It is evident that after their break-up, she received Rs.50,000/- from the applicant herein on 09.03.2021. In these background facts, this Court is of the considered view that prima-facie, it appears that the relationship between the accused - applicant and victim - complainant was of consensual nature and she remained in the company of the applicant herein with all understanding the nature and consequences of sexual indulgence. The applicant herein remained present before the Investigating Officer and has cooperated the investigation and his mobile phone is also seized by the authority. Applicant is permanent resident of Ahmedabad and he does not flee from the justice. In the aforesaid facts, this Court is of the opinion that his custodial interrogation is not necessary."

6. Considering the facts and circumstances of the case and the role attributed to the present applicant in the alleged offence, I find no reason to decline pre-arrest bail to the applicant. 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 FIR being C.R. No. 11191030210071 of 2021 registered with Mahila Police Station (West) Dist.: Ahmedabad on his executing 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 concerned Police Station on 21.03.2022 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 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 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.

8. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order. Rule is made absolute to the aforesaid extent. Direct service is permitted.