

(2022) 10 GUJ CK 0051

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 6749, 7448 Of 2022

Mahendrasinh Bhojubha Chavda

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 10-10-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 107, 114, 306, 506(2)
Gujarat Money Lenders Act, 2011 — Section 5, 33, 40, 42

Citation : (2022) 10 GUJ CK 0051

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Premal S Rachh, Nabil O Bloch, L B Dabhi

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr. Premal S. Rachh on behalf of the applicants, learned Additional Public Prosecutor Mr. L.B. Dabhi on behalf of the respondent-State and learned Advocate Mr. Nabil Bloch on behalf of the first informant.

2. By way of these applications under Section 438 of the Code of Criminal Procedure, 1973, the applicants – original accused pray for being released on anticipatory bail in connection with FIR No. 11202046220229 of 2022 registered with Jamnagar Panchkoshi 'B' Division Police Station for offences punishable under Sections 306, 506(2) and 114 of the Indian Penal Code and under Sections 5, 33, 40 and 42 of the Gujarat Money Lenders Act.

3. At the outset it would be required to be noted that vide order dated 05.04.2022 a learned Co-ordinate Bench of this Court had been pleased to protect the applicant of Criminal Misc. Application No. 6749 of 2022 and whereas insofar as the applicant of Criminal Misc. Application No. 7448 of 2022 is concerned, a learned Co-ordinate Bench of this Court vide an order dated

19.04.2022 had been pleased to protect the said applicant. It further appears that such protection has enured in favour of the present applicants till date.

4. Learned Advocate Mr. Rachh for the applicants submit that the nature of allegations are such for which custodial interrogation at this stage may not be necessary. Besides, the applicants are available during the course of investigation and will not flee from justice. In view of the above, the applicants may be granted anticipatory bail. 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 their remand. He would further submit that upon filing of such application by the Investigating Agency, the right of applicants-accused to oppose such application on merits may be kept open.

5. Learned Additional Public Prosecutor Mr. Dabhi appearing on behalf of the respondent-State has opposed grant of anticipatory bail to the applicants looking to the nature and gravity of the offence.

6. Having heard learned Advocates for the parties and having considered the documents on record, this Court has considered the following relevant aspects:

[1] Insofar as the applicant of Criminal Misc. Application No. 6749 of 2022 is concerned, while it appears that there is no specific mention of any amount in the suicide note, it appears that from the diary of the deceased the present applicant is stated to have lent certain amount to the deceased. It is alleged by the learned Advocate for the first informant that the deceased had paid an amount of Rs. 20,69,000/- of interest with principal amount and whereas the applicant had charged around 3/% interest.

[2] Insofar as applicant of Criminal Misc. Application No. 7448 of 2022 is concerned, while there is no specific mention about any amount in the suicide note, as per the first informant from the diary it appears that the applicant had lent an amount of Rs. 5 Lacs to the deceased and whereas the applicant had recovered an amount of Rs. 10 Lacs as interest.

[3] It appears that insofar as both the applicants are concerned, that the transaction even as per the affidavit of the first informant was from the period between 2014 and 2018. It also appears as noted hereinabove that except for the monetary transaction, no overt act has been attributed to the present applicants in the suicide note.

[4] It appears that there is a delay of approximately one and half months in filing of the FIR.

[5] It also appears that except for the above noted roles being mentioned in the suicide note it does not appear that the applicants had instigated the deceased in committing unfortunate act.

[6] It also does not appear that any positive acts could be attributed to the present applicants which would even be termed as an illegal omission, which would have pressurized the deceased to commit the act in question.

[7] It appears that the deceased was facing financial trouble on account of the fact that one of the co-accused being his friend had borrowed a substantially large amount from the deceased and he was not returning the same back. The said co-accused having preferred Criminal Misc. Application No. 8117 of 2022 and having withdrawn the same today.

[8] While the allegation of the applicants having charged higher rate of interest or might have illegally deducted some amount recoverable by the deceased, may be acts which may otherwise be illegal but in the considered opinion of this Court, doing such acts, prima facie, would not suffice the requirement of section 107 of Indian Penal Code.

[9] It also appears that the applicant do not have antecedent of being involved in any criminal activity.

7. Having regard to the circumstances in question, and considering the law laid down by the Hon'ble Apex Court in the case of *Siddharam Satlingappa Mhetre v. State of Maharashtra* and Ors. reported in (2011)1 SCC 694, this Court is inclined to consider these applications.

8. In the result, the present applications are allowed by directing that in the event of applicants herein being arrested pursuant to FIR No. 11202046220229 of 2022 registered with Jamnagar Panchkoshi 'B' Division Police Station, the applicants shall be released on bail on furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand) each with one surety of like amount each, on the following conditions that the applicants shall :

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

(b) 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 them from disclosing such facts to the Court or to any police officer;

(c) 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;

(d) 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;

(e) 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;

(f) the applicant of Criminal Misc. Application No. 6749 of 2022 shall remain present at the concerned Police Station on 14.10.2022 between 11:00 a.m. and

2:00 p.m.; and thereafter shall continue to mark his presence at the concerned Police Station once in a month for a period of next three months.

9. Insofar as the applicant of Criminal Misc. Application No. 7448 of 2022 is concerned, while it appears that his statement is already recorded, yet in case the Investigating Officer is of the opinion that his statement would have to be further recorded, then considering his age and considering that the said applicant is stated to be in bedridden condition as of now, the Investigating Officer after having the physical condition of the applicant verified shall, if require, record a statement of the said applicant from his residence.

10. Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicants to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. 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 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 applicants on bail. Rule is made absolute to the aforesaid extent. Direct service is permitted.