

(2022) 07 GUJ CK 0104
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 11826 Of 2022

Mahera Ajaybhai Ramanbhai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 26-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Gujarat Prohibition Act, 1949 — Section 65A, 65(e), 81, 116B

Citation : (2022) 07 GUJ CK 0104

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Riddhesh Trivedi, Ronak Raval

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr.Riddhesh Trivedi appearing on behalf of the applicants and learned Additional Public Prosecutor Mr.Ronak Raval on behalf of the respondent-State.
2. Rule. Learned APP waives service of rule on behalf of the respondent-State.
3. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicants No.1, 2, and 3 – original accused No.7, 4, & 6 pray for being released on anticipatory bail in connection with FIR No.11187002220311 of 2022 registered with Balasinor Police Station, District Mahisagar on 8.6.2022 for offences punishable under Sections 65-A, 65(e), 116-B, 81 of Gujarat Prohibition Act, 1949.
4. Learned Advocate Mr.Trivedi for the applicants would submit that the nature of allegations are such for which custodial interrogation of the applicants at this stage is not 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 Mr.Trivedi 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. Learned Advocate 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. This application has been vehemently opposed by learned Additional Public Prosecutor Mr. Raval appearing on behalf of the respondent-State, who would submit that looking to the nature and gravity of the offence the applicants may not be released on anticipatory bail by this Court.

6. Having heard the learned Advocates for the parties and having perused the investigation papers as well as the documents on record, following aspects are taken into consideration by this Court:

1. That the applicants, though named in the FIR, have been arraigned as accused only on the basis of a statement of a juvenile, who was apprehended at the spot. The allegations against the applicants being that the applicants were managing the liquor business of one Rajesh @ Bodo Mangalbai Mahera. The statement of Rajesh, as submitted by the learned APP, would reveal that he has left this illegal business and whereas he does not know anything about the other accused.

2. It also appears that the value of the prohibited liquor seized by the Investigating Officer was approximately Rs.14,,940/- only.

3. While the applicant Nos.1 and 3 are stated to have one antecedent, applicant No.2 is stated to have no antecedent at all.

4. It also appears that the original accused No.1 and accused No.3 have already been apprehended, the main allegations of being involved in the activity being against the said accused.

7. Having regard to the circumstances noted above, 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 this application.

8. In the result, the present application is allowed by directing that in the event of applicants herein being arrested pursuant to FIR No.11187002220311 of 2022 registered with Balasinor Police Station, District Mahisagar on 8.6.2022, the applicants shall be released on anticipatory bail on furnishing a personal bond of Rs.10,000/- (Rupees Ten Thousand only) each with one surety of like amount, on the following conditions that the applicants:

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

(b) shall remain present at the concerned Police Station on 29.07.2022 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 or till further orders;

(f) 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;

(g) shall mark their presence on every first Monday of the month for a period of next three months at the concerned Police Station;

9. 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 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.

10. 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.