

(2022) 06 GUJ CK 0081

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 7516 Of 2022

Mangeshbhai Jivantram Fulwani

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 13-06-2022

Acts Referred:

Indian Penal Code, 1860 — Section 406, 420

Citation : (2022) 06 GUJ CK 0081

Hon'ble Judges : Niraj R. Mehta, J

Bench : Single Bench

Advocate : Samir Afzal Khan, LB Dabhi

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr. Samir Afzal Khan for the applicant and learned Additional Public Prosecutor Mr. L.B. Dabhi on behalf of the respondent-State.

2. Rule. Learned APP Mr. Dabhi waives service of rule on behalf of the respondent-State.

3. By way of this application, the applicant apprehending his arrest in connection with FIR No. 11210001210855 of 2021 registered with Hajira Police Station, Dist. Surat on 27.11.2021 for offences punishable under Sections 406, 420 of the Indian Penal Code.

4. It appears that the present applicant had been granted bail by the learned Sessions Court in Criminal Miscellaneous Application No. 6914 of 2021 vide order dated 09.12.2021 and whereas since the applicant had not remained present before the Investigating Officer as per the direction of the learned Sessions Court, the respondent-State had preferred an application for anticipatory bail and whereas it appears that vide an order dated 04.04.2022, in Criminal Miscellaneous Application No. 1750 of 2022 learned Additional Sessions Judge,

Surat, had been pleased to cancel the anticipatory bail granted to the present applicant. It appears that the present applicant, had been directed by learned Co-ordinate Bench of this Court vide an order dated 20.04.2022 to appear before the Investigating Officer and whereas today it is informed by learned APP Mr. Dabhi that as per the direction of this Court, the applicant had remained present before the Investigating Officer on the 24.04.2022 and whereas he had been directed to remain present before the Investigating Officer on the 29.04.2022. It appears that the applicant was also served with non-bailable warrant in connection with the complaint under Section 138 wherein the present applicant was shown as an accused.

5. Learned Advocate for the applicant on instructions states that the applicant is 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 would further submit that upon filing of such application by the Investigating Agency, the right of applicant-accused to oppose such application on merits may be kept open.

6. Learned Additional Public Prosecutor appearing on behalf of the respondent – State has opposed grant of anticipatory bail looking to the nature and gravity of the offence. It was, therefore, prayed that no discretion may be exercised in favour of the applicants.

7. Having regard to the reason stated by learned Co-ordinate Bench of this Court in order dated 20.04.2022, more particularly, considering the fact that the present applicant had remained present before the Investigating Officer on 25.04.2022 and further considering the fact that the applicant had given a justifiable reason for he has not complying order dated 09.12.2021 in Criminal Miscellaneous Application No. 6914 of 2021 passed by the learned Sessions Court, in the considered opinion of this Court, the present application deserves consideration.

8. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors., reported in [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab, reported in (1980) 2 SCC 565. This Court has also taken into consideration the recent decision of the Apex Court in the case of Sushila Aggarwal and others Vs. State (NCT of Delhi) and another reported in (2020) 5 SCC 01.

9. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to the FIR No. 11210001210855 of 2021 registered with Hajira Police Station, Dist. Surat, the applicant shall be released on bail on furnishing a personal bond of Rs.15,000/- (Rupees Twenty Five 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 the concerned Police Station on 16.06.2022 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 his 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.

10. Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicant to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. 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.

11. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the applicant on bail. Rule is made absolute to the aforesaid extent.

Direct service is permitted.