

(2022) 02 GUJ CK 0061

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 22238 Of 2021

Mansukhbhai Mangabhai Kathad

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 16-02-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 34, 409

Citation : (2022) 02 GUJ CK 0061

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Deep D Vyas, Dhaval D Vyas, 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. 11186004210612 of 2021 registered with Prabhas Pathan Police Station, Dist. Gir-Somnath, for the

offences under Sections 409 and 34 of the Indian Penal Code, 1860.

2. Learned advocate for the applicant submits that the applicant is innocent and he has been falsely implicated in the alleged offence. The applicant is

neither connected nor concern with the agency, bank or even with the main accused. The whole case is based on documentary evidence and hence,

custodial interrogation of the applicant is not essential for the purpose of investigation.

3. 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.

4. 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 the IO has filed chargesheet against the main accused Jayeshbhai Aahir and Amit Vala respectively. Case is based on documentary

evidence. Mr. Deep Vyas on instructions states that, without prejudice to the right and contentions of the applicant, he is ready and willing to deposit

Rs.7,50,000/- before the trial Court within a period of two months from the date of receipt of this order. The applicant has no past antecedent of like

nature and he has cooperated with the investigation. In this background, custodial interrogation of the applicant is not found to be essential for the

purpose of investigating.

5. 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. 11186004210612 of 2021 registered with Prabhas Pathan Police Station, Dist. Gir-Somnath 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 22.02.2022 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;

(h) The applicant shall deposit Rs.7,50,000/- before the trial Court within a period of two months from the date of receipt of this order. Upon

depositing the said amount, the trial Court shall invest the amount in any Nationalized Bank initially for a period of three years and thereafter, renew it

from time to time till further order of the Court. It is clarified that if the applicant is failed to deposit such amount, the complainant/Investigating Officer

is at liberty to file application for cancellation of bail granted to the applicant before Sessions Court concerned.

6. 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.

7. 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.