

(2023) 06 GUJ CK 0005

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9295 Of 2023

Merubhai Ramajibhai Bhunbhariya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 02-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 41A, 438
Indian Penal Code, 1860 — Section 114, 325, 385, 387, 504, 506(2)
Arms Act, 1959 — Section 25(1)
Gujarat Police Act, 1951 — Section 135

Citation : (2023) 06 GUJ CK 0005

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : N P Pandya, J.K. Shah, Ashish M Dagli

Final Decision : Disposed Of

Judgement

Hasmukh D. Suthar, J

1. Rule returnable forthwith. The learned APP waives service of notice of rule for and on behalf of the respondent-State.

2. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant-original accused has prayed to release him on anticipatory bail in the event of his arrest in connection with the FIR registered at the Tankara Police Station, Morbi vide CR No.11189006230293 of 2023, for the offences punishable under Sections 385, 387, 325, 504, 506(2) and 114 of the Indian Penal Code read with Section 25(1) of the Arms Act and Section 135 of the Gujarat Police Act.

3. Heard learned advocate Mr. Nirav Pandya appearing for the applicant, Mr. J.K. Shah, learned APP for the State and Mr. Ashish M. Dagli, learned advocate appearing for the complainant.

4. Learned advocate Mr. Dagli appearing for the complainant has drawn attention

of the Court to the order passed by the learned Sessions Judge and submitted that on 19, 20, 21 and 23rd April, 2023, the present applicant was not found at home and Investigating Officer has made an attempt to serve the notice.

5. Learned advocate Mr. Nirav Pandya appearing on behalf of the applicant would submit that no notice under section 41A of the Cr.P.C. was issued or served to the present applicant. Learned advocate further submits that considering the nature of the offence, the applicant may be enlarged on anticipatory bail by imposing suitable conditions.

6. On the other hand, the learned APP appearing on behalf of the respondent-State has opposed this application for grant of anticipatory bail to the applicant looking to the nature and gravity of the offence.

7. Having heard the learned advocates appearing for the respective parties, prima facie, it appears that the alleged offence is punishable upto 7 years imprisonment and that even the mandatory provision of Section 41A of the Cr.P.C. is required to be scrupulously followed by the police / Investigation Officer and investigation authority has to scrupulously follow the mandate of dictum of Hon'ble Supreme Court in the case of Arnesh Kumar Vs. State of Bihar, reported in (2014) 8 SCC 273 and subsequently, dictum of Hon'ble Supreme Court in the case of Satender Kumar Antil Vs. Central Bureau of Investigation reported in 2022 LiveLaw (SC) 577, it is mandatory on the part of the police authority prior to making the arrest of the concern, the police authority has to issue notice under Section 41A of the Cr.P.C. scrupulously.

8. In view of the above, if the applicant desirous to remain present before the police authority and if intended to join the investigation, then he shall have to remain present before the police authority on 05.06.2023.

9. Hence, without entering into the merits of present petition, it is expected that the investigation agency shall have to follow the dictum of the Hon'ble Supreme Court in the case of Arnesh Kumar (supra) and Stender Kumar Antil (supra) and the mandatory provisions of Section 41A of the Cr.P.C.

10. With the aforesaid directions, the matter stands disposed of. Rule is made absolute to the aforesaid extent.

11. Liberty is reserved in favour of the applicant to approach the appropriate forum in case of difficulty.