

(2022) 07 GUJ CK 0055

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 13747 Of 2021

Mevabhai Ganeshbhai Rabari

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 15-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 294(b), 323, 376(m), 506

Citation : (2022) 07 GUJ CK 0055

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Tushar Chaudhary, Dharm K Raval, LB Dabhi

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr.Tushar Chaudhary appearing on behalf of the applicant and learned Additional Public Prosecutor Mr.Dabhi on behalf of the respondent-State.

2. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant – original accused prays for being released on anticipatory bail in connection with FIR No.11195030210131 of 2021 registered with Mavsari Police Station, District Banaskantha on 7.7.2021 for offences punishable under Sections 323, 506(2) and 294(b) of IPC and Section 376(m) (added) of IPC.

3. Considering the submissions of the learned Advocate Mr.Tushar Chaudhary for the applicant, learned APP Mr.Dabhi for the respondent State and learned Advocate Mr.Deva Patel for the First Informant and with the express consent of the learned Advocates for the parties, more particularly considering the sensitive nature of the allegations, this Court may not give reasons. Having heard the learned Advocates for the parties and having perused the documents on record,

the following aspects are noted by this Court :-

1. That initially a complaint for the offences punishable under Sections 323, 506(2) and 294(b) had been lodged, but later on the Investigating Officer after statement of the prosecution had been recorded had requested the learned Magistrate for addition of offence punishable under Section 376(m) of IPC;

2. It appears that such an allegation appears to be prima facie frivolous more particularly considering that the husband of the prosecutrix was sleeping adjacent/nearby;

3. It also appears that the prosecutrix and the present applicant were in some kind of relationship.

4. 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.

4. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR No.11195030210131 of 2021 registered with Mavsari Police Station, District Banaskantha on 7.7.2021, the applicant shall be released on anticipatory bail on furnishing a personal bond of Rs.10,000/- (Rupees Ten Thousand only) with one surety of like amount, on the following conditions that the applicant:

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

(b) shall remain present at the concerned Police Station on 21.07.2022 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 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;

(g) shall mark his presence once in every month for a period of next three months at the concerned Police Station;

5. 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.

6. 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.

7. It is clarified that all the above observations are for deciding the present application and whereas the above observations may not influence any learned Court considering any applications between the parties at a later stage. The application is allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted.