

(2021) 09 GUJ CK 0080

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 7939 Of 2021

Mohammad Hussain S/O Late Rasul Sundsara

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 21-09-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 70, 438
Indian Penal Code, 1860 — Section 147, 148, 149, 326, 332, 333, 337, 427
Prevention Of Damage To Public Property Act, 1984 — Section 3, 7
Bombay Police Act, 1951 — Section 135

Citation : (2021) 09 GUJ CK 0080

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. This application is filed by the applicant under Section 438 of the Code of Criminal Procedure, 1973 for anticipatory bail in the event of his arrest in connection with FIR registered at C.R. No.I-86 of 2010 with VAGDOD POLICE STATION, DISTRICT-PATAN, for the offence punishable under Sections 147, 148, 149, 326, 333, 332, 337, 427 of the Indian Penal Code, under Section 3 and 7 of the Prevention of Damage to Pubic Property Act, under Section 135 of Bombay Police Act.

2. Learned Advocate appearing on behalf of the applicant would submit that considering the nature of offence, the applicant may be enlarged on anticipatory bail by imposing suitable conditions.

3. On the other hand, the learned Additional Public Prosecutor appearing for the respondent-State has opposed this application and granting anticipatory bail to the applicant looking to the nature and gravity of the offence.

4. I have heard the learned advocates appearing for the respective parties,

perused the investigation papers and have also taken into consideration the facts of the case, nature of allegations, role attributed to the applicant- accused. Without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicant. 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 Others, reported at [2011] 1 SCC 6941, wherein the Hon'ble Apex Court has reiterated the law laid down by the Constitutional Bench in the case of Shri Gurubaksh Singh Sibbia and others, reported at (1980) 2 SCC 665.

Following aspects are also considered:-

(I) The F.I.R. is registered on 16-08-2010 for the offence which is alleged to have taken place on 16-08-2010;

(II) Learned Advocate for the applicant submitted that the offence is of the year 2010, where the applicant had filed earlier application for anticipatory bail, which was rejected way back in the year by order dated 12-01-2011 passed in Criminal Misc. Application No.219 of 2011. Thereafter, the applicant claims to be residing in the village, but applicant was never called for or the summoned for the investigation or trial.

(III) Learned Advocate for the applicant submitted that it was only in the year 2021, the applicant was got knowledge of proceedings under Section-70 of Cr.P.C. in connection with the same C.R. where the trial was in progress and witnesses were being examined.

(IV) Learned Advocate for the applicant submitted that before the trial Court in the anticipatory bail application, conession was recorded by the Public Prosecutor for the physcial presence of the applicant for the purpose of investigation, was not required.

(V) Learned Advocate for the applicant submitted that considering the age of the applicant being 74 years now.

(VI) Learned Advocate for the applicant submitted that considering the fact that the applicant is protected vide order dated 09-06-2021.

(VII) Learned Additional Public Prosecutor under the instructions of the Investigating Officer is unable to bring on record any special circumstances against the applicant.

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 the 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 the applicant-accused to oppose such application on merits may be kept open.

6. In the result, the present application is allowed by directing that in the event

of arrest of the applicant herein in connection with FIR registered as C.R. No.I-86 of 2010 with VAGDOD POLICE STATION, DISTRICT-PATAN, the applicant shall be released on bail on his furnishing a personal bond of Rs.10,000/- (Rupees ten thousands only) with one surety of the like amount on the following conditions that he :

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

(b) shall remain present at the concerned Police Station on 28-09-2021 between 11.00 AM and 02.00 PM;

(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 shall 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 till further orders without the permission of Trial Court;

(f) To mark presence once in month before the concerned Police Station till filing of the charge-sheet;

(g) 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

(h) will make himself available for the investigation throughout as well as remain present on each and every date of the trial;

(i) 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 the same on merits;

7. 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.

8. 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.

9. The application is allowed accordingly. Rule is made absolute in the aforesaid terms.

Direct service is permitted.