

(2020) 08 GUJ CK 0006
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 19299 Of 2019

Mohanbhai Tulshibhai Dabhi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 04-08-2020

Acts Referred:

Gujarat Mineral (Prevention Of Illegal Mining Transportation And Storage) Rules, 2017
— Rule 3(12), 21
Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 114, 379
Mines And Minerals (Regulation & Development) Act, 1957 — Section 4(1), 4(1)(A), 21

Citation : (2020) 08 GUJ CK 0006

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : D K Trivedi, JK Shah

Final Decision : Allowed

Judgement

Ashutosh J. Shastri, J

1.0 Present application is filed under Section 438 of the Code of Criminal Procedure seeking Anticipatory Bail as the applicant is apprehending arrest

in connection F.I.R. bearing I-C.R.No.176 of 2019 registered with Narol Police Station, Ahmedabad for the alleged offences punishable under

Sections 379 and 114 of the IPC, Rule 3(12) and 21 of the Gujarat Mineral (Prevention of Illegal Mining Transportation and Storage) Rules, 2017 as

well as Section 4(1), 4(1)(A) and 21 of the Mines and Minerals (Regulation & Development) Act, 1957.

2.0 Heard, learned advocate for the applicant as well as learned Additional Public Prosecutor Mr.J.K.Shah.

3.0 Mr.D.K.Trivedi, learned advocate for the applicant, has submitted that the

applicant is an innocent person and has wrongly been arraigned in the prosecution. Learned advocate has further submitted that present applicant irrespective of any allegation in the FIR, is aged about more than 85 years by-now and is not keeping good health. Considering this age factor, the Court may kindly consider the request as he is ready and willing to abide by any of the condition which this Court deems it proper to impose. Additionally, it has been submitted that the applicant is not having any criminal antecedent and the applicant being an old man if allowed to languish in jail in this pandemic situation, his health would be at severe risk and, therefore, considering this, solitary circumstance, the applicant may be enlarged on anticipatory bail.

4.0 As against this, Mr.J.K.Shah, learned APP, has submitted that there are specific allegations levelled against the applicant as well and along with other co-accused persons, the applicant has committed a serious crime. Therefore, strictly on merit, no case deserves to be considered. However, the learned APP has submitted that looking to his age about 85 years and in view of

5.0 Having regard to the facts and circumstances of the case and having gone through overall material on record, without much examining the merit or de-merit of the case, as to whether the applicant deserves to be enlarged, the Court has expressly considered the age factor of the present applicant.

Undisputedly, the applicant is aged about 85 years and not keeping good health, as stated above. Hence, in view of this solitary consideration, since the applicant is inclined to abide by any of the conditions, the Court is inclined to consider the request of the applicant only.

6.0 This Court has also taken into consideration the law laid down by the Apex Court in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors. reported in [2011] 1 SCC 694, wherein, the Apex Court reiterated the law laid down by the Constitutional Bench in the case of Shri Gurubaksh Singh Sibbia & Ors. reported in [1980] 2 SCC 565.

7.0 Learned Counsel for the parties do not press for further reasoned order.

8.0 In the result, this application is allowed. It is directed that, in the event, the applicant herein is arrested pursuant to F.I.R. bearing I- C.R.No.176 of

2019 registered with Narol Police Station, Ahmedabad, the applicant shall be released on bail on furnishing a bond of Rs.25,000/- (Rupees Twenty

Five Thousand only) with one surety of like amount on 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 8th August, 2020 between 11.00 am to 2.00 pm;

[c] shall not hamper the investigation in any manner nor shall directly or indirectly make any inducement, threat or promise to any witness so as to dissuade them from disclosing such facts to the Court or to any Police Officer;

[d] shall at the time of execution of bond, furnish the address to the Investigating Officer and the Court concerned and shall not change the residence till the final disposal of the case or till further orders;

[e] will not leave India without the permission of the Court and, if is holding a Passport, shall surrender the same before the trial Court immediately.

[f] It would be open to the Investigating Officer to file an application for remand, if he considers it just and proper and the concerned Magistrate would decide it on merits.

[g] 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.

9.0 Rule is made absolute to the aforesaid extent.

10.0 The Registry is directed to communicate this order by fax or e-mail to the trial court.