

(2022) 07 GUJ CK 0105
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 5101 Of 2021

Mukeshbhai Jitubhai Patel (As Per Fir) (Mukeshbhai
Jitendrabhai Patel (As Per Lower Court))

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 26-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 114, 328, 376, 376(2)(n), 506(1)

Citation : (2022) 07 GUJ CK 0105

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Siddharth H Dave, Ronak Raval

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr.Siddharth Dave appearing on behalf of the applicant and learned Additional Public Prosecutor Mr.Ronak Raval on behalf of the respondent-State.

2. Rule. Learned APP waives service of rule on behalf of the respondent-State.

3. 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.11191003200982 of 2020 registered with Khokhra Police Station, District Ahmedabad on 15.9.2020 for offences punishable under Sections 328, 376, 376(2)(n), 506(1), 114 of IPC.

4. Learned Advocate Mr.Siddharth Dave for the applicant would submit that the nature of allegations are such for which custodial interrogation of the applicant at this stage is not necessary. Besides, the applicant is available during the course of investigation and will not flee from justice. Learned Advocate Mr.Dave would submit that the applicant had been falsely implicated by the First Informant, with

whom the applicant and his wife had some monetary transaction and they had arrived at settlement. Learned Advocate Mr.Dave would submit that the applicant is a cancer patient and, therefore, this Court may consider his case sympathetically. In view of the above, the applicant may be granted anticipatory bail. Learned Advocate Mr.Dave 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 powers of Investigating Agency to file an application before the competent Court for his remand. Learned Advocate would further submit that upon filing of such application by the Investigating Agency, the right of applicant-accused to oppose such application on merits may be kept open.

5. This application has been vehemently opposed by learned Additional Public Prosecutor Mr. Raval appearing on behalf of the respondent-State, who would submit that looking to the nature and gravity of the offence the applicant may not be released on anticipatory bail by this Court.

6. Having heard the learned Advocates for the parties and having perused the investigation papers as also the documents on record, following aspects are taken into consideration by this Court:

1. It appears that prior to the FIR in question being registered, the parties i.e. the present applicant and his wife and the First Informant had some monetary transaction.

2. It also appears that since there was some dispute on account of the said monetary transaction, the FIR making such serious allegations had been preferred. It also appears that the parties to the dispute had arrived at a settlement and whereas in lieu of the settlement, an amount of Rs.10,00,000/- was given to the First Informant and whereas an amount of Rs.13,00,000/- is pending to be paid to the First Informant;

3. While this Court is not concerned with the settlement between the parties, since the said settlement does not appear to have reached finality, the fact remains that in spite of such serious allegations levelled by the First Informant against the applicant and his wife in the FIR, the First Informant appears to have agreed to settle the dispute, which aspect is taken into consideration by this Court;

4. The fact that the present applicant is stated to have cancer of third stage, and whereas he is not in a position even to move around.

7. 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.

8. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR No.11191003200982 of 2020 registered with Khokhra Police Station, District Ahmedabad on 15.9.2020, 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 29.07.2022 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;

9. 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.

10. 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. Rule is made absolute to the aforesaid extent. Direct service is permitted.