

(2023) 06 GUJ CK 0032

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 4090 Of 2023, Criminal
Misc.Application (Fixing Date Of Early Hearing) No. 1 Of 2023

Mukeshkumar Hasmukhbhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 34, 120B, 420, 467, 465, 468, 471

Citation : (2023) 06 GUJ CK 0032

Hon'ble Judges : Nirzar S. Desai, J

Bench : Single Bench

Advocate : NK Majmudar, Hardik A Dave, Manan Mehta

Final Decision : Allowed/Disposed Of

Judgement

Nirzar S. Desai, J

1. Rule. Learned APP, Mr.Manan Mehta waives service of notice of Rule on behalf of respondent-State whereas learned advocate Mr.Hardik Dave waives service of notice of Rule on behalf of original complainant.

2. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicants - accused have prayed for anticipatory bail in connection with the FIR bearing C.R.No.11210063230094 of 2023 registered with Singhanpor Police Station, Surat City for the offences punishable under Sections 420, 467, 465, 468, 471, 120-B and 34 of the Indian Penal Code.

3. Learned advocate for the applicants submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. He further submits that the applicants will keep themselves available during the course of investigation, trial also and will not flee from justice.

4. Learned advocate for the applicant on instructions states that the applicants are 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. He further submit that upon filing of such application by the Investigating Agency, the right of applicants accused to oppose such application on merits may be kept open. Learned advocate, therefore, submits that considering the above facts, the applicants may be granted anticipatory bail.

5. Learned Additional Public Prosecutor and learned advocate Mr. Hardik Dave appearing on behalf of the respondent – State and original complainant respectively have opposed grant of anticipatory bail looking to the nature and gravity of the offence.

6. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicants.

7. This Court has considered following aspects,

(i) essentially the entire FIR is based on the Will allegedly executed by the deceased mother which was registered after her death for which an application for probate is preferred by the present applicants wherein the original complainant is joined as party respondent;

(ii) even the original complainant has preferred an application objecting the Will on the ground that the Will is forged, fabricated and bogus one and that dispute has not attained the finality as the same is pending adjudication before the competent Court;

(iii) though Will is challenged by way of Civil Suit as well as it is questioned by way of present complaint, property in question has not been transferred and any third party rights are created;

(iv) essentially prima facie it seems that as present applicants have not changed the status quo of land as no probate in respect of Will is granted and the genuineness of Will is being examined by civil court, I deem it appropriate to grant anticipatory bail to present applicants;

(v) the applicants have shown willingness to cooperate with the investigating agency;

8. In the facts and circumstances of the present case, since the custodial interrogation of the applicant is not required, I am inclined to consider the case of the applicant.

9. 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 Ors.*, reported at [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of *Shri*

Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab, reported at (1980) 2 SCC 565.

10. In the result, the present application is allowed. The applicants are ordered to be released on bail in the event of their arrest in connection with FIR bearing C.R.No.11210063230094 of 2023 registered with Singhanpor Police Station, Surat City on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of like amount on the following conditions that the applicants:

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

(b) shall remain present at concerned Police Station on 15.06.2023 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 residence till the final disposal of the case till further orders;

(f) shall not leave India without the permission of the concerned trial court and if having passport shall deposit the same before the concerned trial court within a week; and

(g) 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 it on merits;

11. 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.

12. At the trial, the concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.

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

14. In view of disposal of the main application, the connected application for fixing date of hearing would not survive. It is disposed of accordingly.