

(2020) 07 GUJ CK 0080

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 10445 Of 2020

Nareshbhai Malshibhai Chauhan

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 31-07-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 114, 467, 468, 471

Citation : (2020) 07 GUJ CK 0080

Hon'ble Judges : A.J.Desai, J

Bench : Single Bench

Advocate : Ankit Y Bachan, Krina Calla

Final Decision : Allowed

Judgement

A.J.Desai, J

1. Rule. Ms. Krina Calla, learned APP waives service of notice of Rule on behalf of respondent-State.

2. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant accused has prayed to release him on

anticipatory bail in case of his arrest in connection with the FIR No.11993007200023 of 2020 registered with B-Division Gandhidham Police Station,

District Kutch â?" East Gandhidham for the offences punishable under Sections 467,468, 471 and 114 of the Indian Penal Code.

3. Learned advocate for the applicant submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary.

Besides, the applicant is available during the course of investigation and will not flee from justice. In view of the above, the applicant may be granted

anticipatory bail.

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

4. Learned Additional Public Prosecutor appearing on behalf of the respondent â?" State has opposed grant of anticipatory bail looking to the nature

and gravity of the offence.

5. Having heard the learned advocate for the parties and perusing the investigating papers and taking into consideration the facts of the case, nature of

allegations, gravity of offences, role attributed to the accused, and considering the allegations levelled against the family members as well as the fact

that co-accused who has allegedly played similar role in the crime has been considered by the coordinate Bench vide order dated 22.6.2020 passed in

Criminal Misc. Application No.2959 of 2020, 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 Honâ??ble Apex Court in the case of Siddharam Satlingappa Mhetre

vs. State of Maharashtra and Ors. as reported at [2011] 1 SCC 6941 ,wherein the Honâ??ble Apex Court reiterated the law laid down by the

Constitution Bench in the case of Shri Gurubaksh Singh Sibbia & Ors., as reported at (1980) 2 SCC 665.

6. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR registered at FIR

No.11993007200023 of 2020 registered with B-Division Gandhidham Police Station, District Kutch â?" East Gandhidham, the applicant shall be

released on 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 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 6.8.2020 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 till further orders;

(f) shall not leave India without the permission of the Court and if having passport shall deposit the same before the 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;

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. Rule is made absolute to the aforesaid extent. Application is disposed of accordingly. Direct service is permitted. Registry to communicate this

order to the concerned Court/authority by Fax or Email forthwith.