

(2022) 02 GUJ CK 0003

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 2444 Of 2022

Nirmalbhai Mulubhai Kangad

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 01-02-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 120B, 278, 285, 406, 420
Gujarat Motor Vehicles Tax Act, 1958 — Section 3, 177, 181, 192(1)
Essential Commodities Act, 1955 — Section 3, 7
Explosive Substances Act, 1908 — Section 9B(1)(B)

Citation : (2022) 02 GUJ CK 0003

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : RJ Goswami, Manan Mehta

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. Rule. Learned APP waives service notice of Rule for and 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 for anticipatory

bail in connection with the FIR being C.R. No. 11217027211337 of 2021 registered with Radhanpur Police Station, Dist.: Patan for the offences under

Sections 406, 420, 278, 285 and 120B of IPC and under Section 3 and 7 of the Essential Commodities Act and under Section 9B(1)(B) of the

Explosive Act and under Section 3, 177, 181 and 192(1) of Gujarat Motor Vehicle Act.

3. Learned advocate for the applicant submits that the applicant has been falsely

implicated in the alleged offence. The applicant has been arraigned as an accused on the statement of accused no. 1.

4. Learned Additional Public Prosecutor appearing on behalf of the respondent â€" State has opposed grant of anticipatory bail stating inter alia that

the allegations against the applicant are grave and serious in nature and custodial interrogation is necessary for further investigation of the case.

5. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, it

appears that the tanker as referred in the FIR was taken by the applicant on rent and in tern, it was given to Dineshbhai Parmar for business purpose

as he was in need of money. The applicant herein was not present at the scene of offence. Except call details, nothing brought on record to suggest

that the applicant was selling alleged bio-diesel. The applicant was not having any past antecedent of like nature. The applicant does not flee from

justice and is readily available at the time of trial. In this background facts, custodial interrogation of the applicant is not found to be essential for the

purpose of investigating.

6. Considering the facts and circumstances of the case and the role attributed to the present applicant in the alleged offence, I find no reason to

decline pre-arrest bail to the applicant. In the result, the present application is allowed. The applicant is ordered to be released on bail in the event of

his arrest in connection with a FIR being C.R. No. 11217027211337 of 2021 registered with Radhanpur Police Station, Dist.: Patan on his executing a

personal bond of Rs.10,000/-(Rupees Ten Thousand Only) with one surety of like amount on the 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 10.02.2022 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 their residence till the final disposal of the case till further orders;

(f) 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

(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 in the present order.

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