

(2023) 05 GUJ CK 0058
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 7817, 7829 of 2023

Parmar Mansukhbhai Bhembhai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 12-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 114, 294(B), 306, 506(1)

Citation : (2023) 05 GUJ CK 0058

Hon'ble Judges : M. R. Mengdey, J

Bench : Single Bench

Advocate : Ashish M Dagli, Utkarsh Sharma

Final Decision : Allowed

Judgement

M. R. Mengdey, J

1. Heard learned Advocate Mr. Ashish M. Dagli for the Applicants.
2. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant-accused has prayed for enlarging them on anticipatory bail in connection with the FIR being C .R. No. 1 1 1 9 1 0 2 3 2 3 0 2 4 6 registered with Vadaj Police Station, Ahmedabad for the offenses punishable under Sections 306, 114, 294(B), 506(1) of the Indian Penal Code.
3. Learned Advocate for the Applicants has submitted that the Applicants are apprehending their arrest in connection the aforesaid FIR and in this connection the earlier application filed by the Applicants before the learned Sessions Court came to be dis-allowed. It is submitted that the Applicants are uncle and aunt respectively of the girl with whom the deceased had a love affair. The present Applicants were staying separately from the family of the girl in question. He submitted that the role attributed in commission of the offence in question is for warning the deceased not to come to their house. He therefore submitted that the present application may be allowed.

4. Learned advocate for the applicants 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, submitted that considering the above facts, the applicants may be granted anticipatory bail.

5. Learned Additional Public Prosecutor appearing on behalf of the respondent – State has opposed grant of anticipatory bail looking to the nature and gravity of the offence. He submitted that specific role of threatening the deceased is attributed to the Applicants Accused. He therefore submitted that the present Application may be dismissed.

6. Having heard the arguments advanced by 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, it appears that the deceased was having love affair and she wanted to marry which has been opposed by the family members of the girl. The girl subsequently engaged to someone else which appears to be reason for which deceased has committed suicide. It is also required to be noted that the present Applicants are the uncle and aunt respectively of the girl in question. Considering the same, the present Application deserves to be allowed.

7. This Court has considered following aspects,

(a) as per catena of decisions of Hon'ble Supreme Court there are mainly two factors which are required to be considered by this court;

(i) prima facie case

(ii) requirement of accused for custodial interrogation.

Therefore, in the facts and circumstances of the present case, this court is inclined to consider the case of the applicant.

8. 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. Further, this Court has also taken into consideration the ratio laid down in the case of Sushila Aggarwal and Ors. v. State (NCT of Delhi) and Anr. in Special Leave Petition No. 7281-7282/2017 dated 29.01.2020.

8.1 This court has also considered the judgment in the case of Arnesh Kumar v. State of Bihar reported in (2014) 8 SCC 273, wherein the Hon'ble Apex Court has observe that whenever there is punishment of 7 years, then the court would be

liberal to exercise the discretion. Further, by exercising the discretion under Section 438 Cr.P.C, the doors of remand by the Investigating Officer is open and therefore also this court is inclined to exercise powers under Section 438 of Cr.P.C.

9. In the result, the present application is allowed. The applicants are ordered to be released on anticipatory bail in the event of his arrest in connection with a F I R be i ng C . R. No . 1 1 1 9 1 0 2 3 2 3 0 2 4 6 registered wit h Vadaj Police Station, Ahmedabad for the offe nse s puni sha bl e under Sections 306, 114, 294(B), 506(1) of the Indian Penal Code on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) each with one surety of like amount on the following conditions;

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

(b) shall remain present at concerned Police Station on 19.5.2023 between 12.00 Noon 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 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 the remand application without being influenced of the observations made by this Court;

10. The applicants 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.

11. At the trial, the concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.
12. Rule is made absolute to the aforesaid extent. Direct service is permitted.