

(2021) 09 GUJ CK 0061

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 10039 Of 2021

Patel Sureshbhai Amratbhai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 20-09-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 143, 147, 149, 188, 269, 427, 454, 457
Disaster Management Act, 2005 — Section 51(a)
Epidemic Diseases Act, 1897 — Section 3

Citation : (2021) 09 GUJ CK 0061

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : HD Brahmabhatt, Vicky B Mehta, Jay S Shah, L.B.Dabhi

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. This is an application by the applicants under Section 438 of the Code of Criminal Procedure, 1973 for anticipatory bail in the event of their arrest in connection with FIR registered at C.R. No.I-11206078210323 of 2021 before Unava Police Station, Mehsana for the offence punishable under Sections 143, 147, 149, 454, 457, 427, 188 and 269 of the Indian Penal Code, Section 3 of the Pandemic Act and under Section 51(a) of the Disaster Management Act.

3. Learned advocate appearing on behalf of the applicants would submit that considering the nature of offence, the applicants may be enlarged on anticipatory bail by imposing suitable conditions.

4. On the other hand, the learned APP appearing for the respondent-State has opposed this application and granting anticipatory bail to the applicants looking to the nature and gravity of the offence.

5. I have heard the learned Advocates appearing for the respective parties and

perused the investigation papers and have also taken into consideration the facts of the case, nature of allegations, role attributed to the applicants-accused and without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicants. 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. as reported at [2011] 1 SCC 6941, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitutional Bench in the case of Shri Gurubaksh Singh Sibbia & Ors., as reported at (1980) 2 SCC 665.

6. Following aspects are also considered:-

I. The FIR is registered on 19.05.2021 for the offence which is alleged to have taken place between 17.05.2021 to 18.05.2021.

II. Investigation pertains to house trespassed where the relation between two parties were strained on account of the girl of the house of the accused having entered into relation with the real brother of the complainant.

III. Submission of learned advocate for the applicants that except for the present three accused persons, all other accused named in the FIR have been enlarged on bail and hence, by applying the principle of parity.

IV. No other antecedents are reported against the applicants as per learned advocate for the applicants.

V. Learned advocate for the applicants, under the instructions, states that to cover up the allegations of damage to the house and the vehicle of the complainant, the applicants are ready and willing to deposit an amount of Rs. 1 Lakh with the trial Court.

VI. Considering the fact that the applicants are protected vide order dated 18.06.2021.

VII. Learned APP under instructions of IO is unable to bring on record any special circumstances against the applicants.

7. Learned Advocate for the applicants on instructions states that the applicants are ready and willing to abide by all the conditions, including impositions of conditions with regard to the 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 applicants accused to oppose such application on merits may be kept open.

8. In the result, the present application is allowed by directing that in the event of arrest of the applicants herein in connection with FIR registered at CC.R. No.I-11206078210323 of 2021 before Unava Police Station, Mehsana, the applicants shall be released on bail on his furnishing a personal bond of Rs.10,000/-(Rupees ten thousands only) each with one surety of the like amount on the following conditions that they shall:

- (a) shall cooperate with the investigation and make available for interrogation whenever required;
- (b) shall remain present at the concerned Police Station on 27.09.2021 between 11.00 AM and 02.00 PM;
- (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 from disclosing such facts to the court or to any police officer;
- (d) shall not obstruct or hamper the police investigation and shall 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 without the permission of Trial Court;
- (f) To mark presence once in month before the concerned Police Station till filing of the charge-sheet;
- (g) 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
- (h) 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 same on merits;
- (i) not to enter Unava for a period of six months except marking presence and for attending the trial.

9. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for Police remand of the applicants. 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 applicants, 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 is made absolute.

Direct service is permitted.