

(2022) 01 GUJ CK 0060

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 759 Of 2022

Pathan Mahmadiliyas Mahmadishak

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 17-01-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 114, 294(b), 323, 324, 325, 326, 427

Gujarat Police Act, 1951 — Section 135(1)

Citation : (2022) 01 GUJ CK 0060

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Utkarsh J Dave, Shweta S Lodha, Krina Calla

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. Rule. 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 has prayed for anticipatory bail in

connection with the FIR being C.R. No.11191025212231 of 2021 registered with Kagdapith Police Station, District: Ahmedabad City for the offence

punishable under Sections 323, 324, 325, 326, 294(b), 114 & 427 of the Indian Penal Code as well as Section 135(1) of the G.P.Act.

3. Learned advocate for the applicant submits that the applicant is innocent and he has been falsely implicated in the alleged offence. He has no past

antecedent of like nature and custodial interrogation of the applicant is not essential for the purpose of investigation.

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 through video conference
and perusing the material placed on record and taking into

consideration the facts of the case, it appears that though the specific role being
assigned to the present applicant in the alleged crime but there is

contradictions with the injuries found on the body of Sebarkhan. The applicant is
aged about 63 years and he has no any past antecedent of like

nature. The co-accused has already been enlarged on bail and there is no
possibility of his fleeing from justice and tampering with the evidence.

6. Considering the facts and circumstances of the case and the role attributed to
the present applicant in the alleged offence as well as age of the

applicant, 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.11191025212231 of 2021 registered with Kagdapith Police Station,

District: Ahmedabad City 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 25.01.2022 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 his 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.