

(2020) 07 GUJ CK 0107
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9999 Of 2020

Pintubhai Rajsinghbhai Bariya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 31-07-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Gujarat Prohibition Act, 1949 — Section 65(A), 65(e), 81, 82, 98(2)

Citation : (2020) 07 GUJ CK 0107

Hon'ble Judges : Bhargav D. Karia, J

Bench : Single Bench

Advocate : Imtiyaz I Mansuri, CM Shah

Final Decision : Allowed

Judgement

Bhargav D. Karia, J

1. Heard learned advocate Mr. Imtiyaz Mansuri for the applicant and learned Additional Public Prosecutor Ms. C.M. Shah for the respondent- State

through video conference.

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

anticipatory bail in case of the applicant's arrest in connection with the C.R. No.11207024200061/2020 registered with Godhra Taluka Police

Station, District Panchmahal for the offences punishable under Sections 65(A), 65(e), 81, 82 and 98(2) of the Gujarat Prohibition Act, 1949.

3. Learned advocate for the applicant submits that considering the nature of allegations, role attributed to the applicant, the applicant may be enlarged

on anticipatory bail by imposing suitable conditions.

4. 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.

5. Heard the learned Advocates for the respective parties and perused the papers.

6. Considering the allegations made in the FIR itself, it appears that the applicant is alleged to be supplier of the contraband liquor. It is however,

revealed from the FIR that the applicant is not found at the scene of the offence nor found with the conscious possession of the contraband liquor.

7. Learned APP states at bar that there are five antecedents registered against the applicant under the Prohibition Act. It was further submitted that

in the charge-sheet i filed qua other accused persons, the applicant is shown as absconding.

8. However, in the present offence, the applicant is not found with conscious possession of contraband liquor, and therefore, pendency of other

offences registered against the applicant becomes insignificance or irrelevant. Learned advocate for the applicant has also stated that the applicant

has preferred a quashing petition being Criminal Misc. Application No.5541/2020 which is pending. Thus, the applicant is entitled to regular bail and

therefore, there is no impediment in granting anticipatory bail to the present applicant.

9. 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., reported at [2011] 1 SCC 694, wherein the Honâ??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.

10. 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 FIR being C.R. No.11207024200061/2020 registered with Godhra Taluka Police Station, District Panchmahal, 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 05.08.2020 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 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 it on merits;

11. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the 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.

12. At the trial, the concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.

13. Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/ Authority

through Fax or E-mail.