

(2022) 07 GUJ CK 0072
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 12528 Of 2022

Prabhatji Chamanji Sabosana (Thakor)

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 20-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Gujarat Prohibition. Act, 1949 — Section 65(a), 65(e), 116B

Citation : (2022) 07 GUJ CK 0072

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : N. H. Jethva, Ronak Raval, Dipa B Zala

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Ms. N.H. Jethva for learned Advocate Ms. Dipa B. Zala for the applicant and learned Additional Public Prosecutor Mr. Ronak Raval on behalf of the respondent-State.

2. Rule. Learned APP waives service of Rule on behalf of the respondent-State.

3. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant prays for being released on anticipatory bail in connection with FIR No. 11195051220263 of 2022 registered with Thara Police Station, District Banaskantha, on 16.04.2022 for offences punishable under Sections 65(a), 65(e) and 116-B of the Gujarat Prohibition Act.

4. Learned Advocate Ms. Jethva for the applicant would submit that the nature of allegations are such for which custodial interrogation of the applicant at this stage is not necessary. Besides, the applicant is available during the course of investigation and will not flee from justice. In view of the above, the applicant may be granted anticipatory bail.

Learned Advocate Ms. Jethva for the applicant on instructions states that the applicant is 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. Learned Advocate would further submit that upon filing of such application by the Investigating Agency, the right of applicant-accused to oppose such application on merits may be kept open.

5. This application has been vehemently opposed by learned Additional Public Prosecutor Mr. Raval appearing on behalf of the respondent-State, who would submit that looking to the nature and gravity of the offence the applicant may not be released on anticipatory bail by this Court.

6. Having heard the learned Advocates for the parties and having perused the investigating papers as well as documents on record, the following relevant aspects are considered by this Court:

[1] That while the prohibited liquor was recovered from a place which is stated to be under the occupation of the present applicant, there is nothing on record or even recovered by the Investigating Officer, which would show that the present applicant was occupying the place in question.

[2] According to learned Advocate Ms. Jethva, the property in question is an abandoned place, which is belonging to the Government and occupied by somebody else.

[3] That there is no material, to show that the prohibited liquor, was belonging to the present applicant, there are no statements of any co-accused or any other material which would show that the prohibited material in question was purchased or even kept by the present applicant at the place in question.

[4] Insofar as the antecedents of the applicant are concerned, while it is alleged that the present applicant was involved in an offence of similar nature of the year 2017, learned Advocate Ms. Jethva would draw the attention of this Court to an order passed by the learned JMFC, Shihori, dated 29.01.2019, whereby the present applicant was acquitted of the said offence.

7. In this view of the matter and considering the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors. reported in (2011)1 SCC 694, this Court is inclined to consider this application.

8. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to the FIR No. 11195051220263 of 2022 registered with Thara Police Station, District Banaskantha, the applicant shall be released on bail on furnishing 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 the concerned Police Station on 23.07.2022 between 11:00 a.m. and 2:00 p.m.;

(c) shall mark his presence at the concerned Police Station once in a month for a period of three months;

(d) 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;

(e) 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;

(f) 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 or till further orders;

(g) shall not leave India without the permission of the Court and, if having passport shall surrender the same before the Trial Court within a week.

9. Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicant to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. 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.

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 absolute to the aforesaid extent.

Direct service is permitted.