

(2022) 03 GUJ CK 0039
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 22168 Of 2021

Premilaben Rajeshbhai Aaydi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 11-03-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 406, 114, 506(2), 508

Citation : (2022) 03 GUJ CK 0039

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Darshan M Varandani, Krina Calla

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicants have prayed for anticipatory bail in connection with the FIR being C.R. No.11993007211815 of 2021 registered with Gandhidham B-Division Police Station, District: Kachchh for the offence punishable under Sections 406, 506(2), 508 & 114 of the Indian Penal Code.

2. Learned advocate for the applicants submits that the applicants are innocent and they have been falsely implicated in the alleged offence. They have no past antecedent of like nature and custodial interrogation of the applicants are not essential for the purpose of investigation.

3. Learned Additional Public Prosecutor appearing on behalf of the respondent – State has opposed grant of anticipatory bail stating inter alia that the allegations against the applicants are grave and serious in nature and custodial interrogation is necessary for further investigation of the case.

4. Having heard the learned advocates for the parties and perusing the material

placed on record and taking into consideration the facts of the case, prima facie, it appears that prior to the FIR, applicant No.2 had submitted an application to the Police Authority against Devjibhai, who is the husband of the complainant, alleging that he is having tendency to lodge the false complaint with oblique motive. Learned advocate for the applicants has submitted that the complainant's husband is a headstrong person and having past antecedents, therefore, false FIR has been registered against the applicants herein. In view of the cross complaint and in absence of past antecedents of like nature against the applicants herein, without expressing any opinion on the merits of the case, this Court is inclined to enlarge the applicants herein on pre-arrest bail.

5. Considering the facts and circumstances of the case and the role attributed to the present applicants in the alleged offence, I find no reason to decline pre-arrest bail to the applicants. In the result, the present application is allowed. The applicants are ordered to be released on bail in the event of their arrest in connection with a FIR being C.R. No.11993007211815 of 2021 registered with Gandhidham B-Division Police Station, District: Kachchh on his 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 themselves available for interrogation whenever required;
- (b) shall remain present at concerned Police Station on 21.03.2022 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 their 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;

6. 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.

7. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

8. Rule is made absolute to the aforesaid extent. Direct service is permitted.