

(2020) 08 GUJ CK 0117

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 7654 Of 2020

Pruthvirajsinh @ Babo Hemantsinh Kher

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 11-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Gujarat Prohibition Act, 1949 — Section 65(A), 65(E), 81, 83, 98(2), 116(B)

Citation : (2020) 08 GUJ CK 0117

Hon'ble Judges : Dr A. P. Thaker, J

Bench : Single Bench

Advocate : Pratik Y Jasani, Himansu Patel

Final Decision : Allowed

Judgement

Dr. A. P. Thaker, J

[1] Heard Mr.Jasani, learned advocate for the applicant and Mr.Patel, learned Additional Public Prosecutor for the respondent â?" State through

Video Conferencing.

[2] By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant - original accused has prayed to

release him on anticipatory bail in case of his arrest in connection with the FIR registered as C.R No. 11202002200134 of 2020 before City â??Câ?

Division Police Station, District: Jamnagar for the offences under Sections 65(A), 65(E), 116(B), 98(2), 81 and 83 of the Prohibition Act.

[3] Learned advocate for the applicant submits that the role of the present applicant has been referred from the statement of the co-accused. He

submits that the car driven by the other co-accused has been enlarged on bail by the concerned Trial Court and the fact that the allegation against the

present applicant is regarding attempting to murder, but he was not driving the alleged car. He further submits that two FIRs have been filed by the concerned Police Station "one is under the provisions of the Indian Penal Code and another is under the provisions of the Prohibition Act. He has submitted that considering the role attributed to the present applicant, he may be enlarged on bail. He further submits that the present applicant has one antecedent in past but that fact may not be considered at this stage as involvement of the present application is only on the basis of the statement of the co-accused. He submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. Besides the applicant will be available during the course of investigation and will not flee away from the justice. In view of the above, the applicant may be enlarged on anticipatory bail by imposing suitable conditions.

[4] Learned advocate 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 for the applicant further submits that upon filing of such application by the Investigating Agency, the right of applicant to oppose such application on merits may be kept open.

[5] Learned Additional Public Prosecutor appearing on behalf of the respondent-State has opposed grant of anticipatory bail on the grounds of nature and gravity of the offence. He further submits that considering the conduct of the applicant as well as the facts that there is one criminal antecedent in past and driving the car by force and the fact that there was serious injury to the person concerned. He submits that the complainant was injured and in that view of the matter, the application may be rejected.

[6] Having perused the materials placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, at this stage, this Court is inclined to grant anticipatory bail to the applicant.

[7] This Court has considered following aspects;

- (i) The age of the applicant- accused;
- (ii) The role attributed to the applicant - accused;

(iii) That other co-accused is enlarged on bail;

(iv) The name of the applicant has been referred from the statement of the co-accused;

(v) The applicant was not driving the alleged car;

[8] This Court has also taken into consideration the law laid down by the Honâ??ble Apex Court in the case of Shri Gurubaksh Singh Sibbia & Ors.,

reported at (1980) 2 SCC 665 and in the case of Sushila Aggarwal Vs. State (NCT of Delhi) reported in AIR 2020 SC 831.

[9] In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR registered as C.R

No. 11202002200134 of 2020 before City â??Câ? Division Police Station, District: Jamnagar, 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 that the applicant shall :

(a) cooperate with the investigation and make available for interrogation whenever required;

(b) remain present at concerned Police Station on 18.08.2020 between 11.00 a.m. and 2.00 p.m.;

(c) 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) 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) 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;

(f) not leave India without the permission of the 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;

[10] 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. 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. Application is disposed of accordingly.

[11] Registry is directed to intimate about this order to the concerned authorities through fax, email and/or any other suitable electronic mode. Learned

advocate for the applicant is also permitted to intimate about this order to the concerned authorities through fax, email and/or any other suitable

electronic mode.