

(2022) 02 GUJ CK 0092

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 6078 Of 2020

Purveg @ Banti Anilbhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 21-02-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 143, 147, 148, 307, 323, 324, 397, 452, 504, 506(2)

Citation : (2022) 02 GUJ CK 0092

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : N.D. Nanavati, Dharmesh R Patel, Krina Calla, Chirag Upadhyay

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. In this application under Section 438 of Cr.P.C, the applicants Purveg @ Banti Anilbhai Patel and Amit @ Bablu Pravinbhai Pandya are seeking pre-arrest bail in connection with the FIR being C.R.No. 11188009200014 of 2020 registered with Modasa Town Police Station, Dist.Aravalli, for the offences punishable under Sections 307, 397, 452, 324, 323, 143, 147, 148, 504 and 506(2) of the Indian Penal Code, 1860.

2. The facts and circumstances giving rise to this application are that the complainant Miraj Desai and injured Anand Patel were serving as rector of Sunrise Hostel, situated at second floor, Block D, Tattvam Arcade, city Modasa, Dist. Aravalli. On the day of incident i.e. on 25.01.2020, at around 22:50 hours, they were on duty at hostel and victim Anand had gone to ground floor of the hostel as there was nuisance of stray dogs, when he was at the first floor of the hostel, seven persons including the present applicants herein chased him, formed an unlawful assembly and being members of the unlawful assembly, with their common object, caused bodily injuries upon Anandbhai. The applicant No.1

Purveg @ Bunty Anil Patel snatched away the iron bracelet from the wrist of the victim and with the help of his belt, he assaulted the victim and thereafter, illegally entered into the office of the rector and looted cash amount of Rs.30,000/-. The accused Hiren Patel assaulted the victim with washbasin pipe having metal bolt. It is alleged that, the other accused, who were present at the place, have also assaulted the victim. The victim was literally stripped by the main accused. It is alleged that, when the first informant tried to intervene, the main accused Hiren Chaudhary gave his introduction stating that he is Hiren Chaudhary and known person of village Dhansura and threatened that if they will file FIR, then be ready for dire consequences.

The whole incident captured in the CCTV camera installed at the hostel premises. The victim was taken to Satyam Multicare Hospital and Trauma Center for further treatment and was admitted as in patient for about 23 days as he suffered serious head injuries. In this background facts, the rector of the hostel, lodged the FIR for the offences as referred above. The statement of the victim in the form of dying declaration recorded by the Executive Magistrate, wherein, with the name of Hiren Patel, he narrated the incident. The investigating agency recovered recording of CCTV footage and identified the persons involved in the alleged offence. As per the prosecution case, seven persons are involved in the offence and out of seven, six persons were identified namely (1) Hiren Hitesh Chaudhary (Patel) (2) Vikalp @ Honey Vinodbhai Gajjar (3) Pranjali Dilipbhai Patel (4) Purveg @ Bunty Anilbhai Patel (5) Harmeet @ Babu Mukeshbhai Patel and (6) Amit @ Bablu Pravinbhai Pandya, whereas, the identity of one person is still not known to the agency.

3. The applicants herein moved an anticipatory bail application before the Sessions Court concerned, which came to be rejected by the Court observing that the offence alleged is serious and prima facie, reasonable ground to believe that the accused have committed an offence and for effective investigation, custodial interrogation of the applicants is necessary and therefore, no case is made out for anticipatory bail.

4. This Court has heard Mr. N.D.Nanavati, learned Senior Counsel assisted by Mr. Dharmesh Patel, learned counsel for the applicants, Mr. Chirag Upadhyay, learned counsel for the first informant and Ms. Krina Calla, learned APP for the respondent State.

5. It is the submission of learned Senior Counsel appearing for the applicant that, applicant No.1 is serving as Talati-cum-Mantri and has been falsely implicated in the alleged offence. Applicant No.2 though present at the place, did not cause any injury. Referring to the images of CCTV footage, submitted by the original informant, he urged that, the victim injured armed with plastic pipe, which facts raised the inference that there might be provocation by his side. He would further submit that, since last two years, the applicants herein protected by this Court and nothing untoward in between happened. The applicants herein cooperated with the investigation and their custodial interrogation is not

necessary for further investigation. The applicants having roots in the society and having no any past antecedent of like nature.

In the aforesaid contentions, learned Senior Counsel would submit that, case is made out for the exercise of power to grant anticipatory bail and application may be allowed by appropriate terms and conditions.

6. Mr. Chirag Upadhya, learned counsel for the original complainant reiterating the facts of the affidavit filed by the complainant, vehemently opposed the application contending that, the anticipatory bail can be granted only in exceptional circumstances where the Court is of prima facie view that the applicant has falsely been roped in the crime. Referring to the facts of the FIR, he would submit that, the prima facie case against the applicants for the commission of alleged offence is made out, as at the scene of offence, the accused Hiren Patel has disclosed his identity and based on CCTV footage, the investigating agency identified all six accused persons except one. He would further submit that, the applicants herein are headstrong persons, having political influence and there is all chances to tamper with the evidence and witnesses. He would further submit that, the injured victim was admitted as in patient in the hospital for about 22 days, which facts show that how and in which manner, he was assaulted by the accused. On the point of investigation, he submitted that, due to protection granted by this Court, the investigation of the case has not proceeded further.

In the aforesaid contentions, learned counsel for the informant would submit that, considering the gravity of offence and prima facie case for the involvement of the applicants in the alleged offence and for the investigation of the case, no case is made out for granting anticipatory bail and therefore application may not be entertained.

7. Ms. Krina Calla, learned APP adopting the arguments advanced by learned counsel for the informant Mr. Upadhyay, she would submit that, the victim was brutally assaulted by the applicant No.1 and accused Hiren Patel, which is evident from the medical case papers. She would submit that, considering the role attributed to the applicants herein, for the effective investigation, their custodial interrogation is necessary and therefore, application is required to be rejected.

8. Before advertng to the issue raised by the respective parties and to examine the facts of the case, it may be desirable to refer to the settled legal principle with the subject, grant or refusal of anticipatory bail. Dealing with the provisions of Section 438 of the Cr.P.C, the Supreme Court in P.Chidambaram Vs. Directorate of Enforcement [2019 (9) SCC 24], has observed that, "ordinarily, arrest is a part of procedure of investigation to secure not only the presence of the accused, but several other purposes. Power under Section 438 is an extraordinary power and same has to be exercised sparingly. The privilege of pre-arrest bail should be granted only in exceptional cases. The judicial discretion

conferred upon the Court has to be properly exercised after application of mind as to the nature and gravity of accusation; possibility of fleeing from justice and other factors to decide whether it is a fit case for grant of anticipatory bail or not. It is further held by the Apex Court that, grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the Court must be circumspect while exercising such powers for grant of anticipatory bail and it should not be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

9. In the case of Sanjay Chandra Vs. CBI, [2012 (1) SCC 440], the Apex Court opined that, the grant or refusal of anticipatory bail lies within the discretion of the Court and is regulated to a large extent by the facts and circumstances of each particular case.

10. In light of the above settled legal principles and applying it to the facts of the present case, this court is of considered view that, the presence of the applicants and co-accused have not been denied by them and therefore, on the day of incident, their presence at the scene of offence is established. The whole incident has been captured in the CCTV footage and images of the footage produced by the informant, which is confirmed by the investigating agency. This Court is of prima facie view that, the accused Hiren Patel and applicant No.1 Purveg @ Buntty Anilbhai Patel have participated in the offence and their overtact in the alleged offence is established.

The accused Hiren Patel was armed with washbasin pipe which has metal bolt, whereas applicant No.1 Purveg @ Buntty Anilbhai Patel used his belt and iron bracelet of the victim. The victim Anandbhai was literally stripped by the accused. It is evident from the medical case papers that, the victim was admitted in the hospital from 26.01.2020 to 18.02.2020. It is alleged against the applicant No.1 Purveg @ Buntty that he looted cash amount of Rs.30,000/- from the office of rector. It emerges from the report of the Investigating Officer that, except one, all the accused have been identified from CCTV footage. The name of the accused Hiren Hitesh Patel disclosed in the FIR itself. Investigation is still pending and as such there is no progress at all.

11. In view of the aforesaid discussions, it cannot be said that the accusation have been made against the applicant No.1 with the object of injuring or humiliating the applicants by arresting them or they have been falsely roped in the alleged offence.

12. In view of the foregoing discussions made hereinabove, so far role of applicant No.1 Purveg @ Buntty Anilbhai Patel is concerned, there is reasonable ground for believing that he has committed the offence. Applicant No.1 being a responsible person, participated in the alleged offence and considering his active role in the alleged offence, I find that it is not a fit case to grant benefit of anticipatory bail to the applicant No.1.

13. So far role of applicant No.2 is concerned, though he was present at the scene of offence, prima facie, this Court is of view that there was no overtact as alleged against applicant No.2 and therefore, when he has no any past antecedent of like nature and pursuant to the order passed by this Court, he remained present before the Investigating Officer and nothing required to be recovered or seized from the custody of applicant No.2. Therefore, without entering into merits of the case, I am inclined to grant anticipatory bail to applicant No.2.

14. In light of the what is stated herein above, considering the factors and parameters, necessary to be considered for adjudication of anticipatory bail under Section 438 of the Cr.P.C, without commenting on merits of the case, I find that it is not a fit case to grant anticipatory bail to applicant No.1 and accordingly, present application is allowed in part. Application qua applicant No.1 stands dismissed.

15. In the result, application filed by applicant No.1 – Purveg @ Buntty Anilbhai Patel is rejected. Interim relief stands vacated.

16. Application filed by applicant No.2 – Amit @ Bablu Pravinbhai Pandya is allowed and is ordered to be released on bail in the event of his arrest in connection with the FIR being C.R.No. 11188009200014 of 2020 registered with Modasa Town Police Station, Dist.Aravalli 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 02.03.2022 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.

17. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicant No.2. The applicant No.2 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 No.2, 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.

18. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order. Rule is made absolute to the aforesaid extent. Direct service is permitted.