

(2024) 03 GUJ CK 0038
In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Anticipatory Bail) No. 4831 Of 2024

Rajeshkumar @ Lalo Mepabhai Jariya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 12-03-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 107, 306
Negotiable Instruments Act, 1881 — Section 138

Citation : (2024) 03 GUJ CK 0038

Hon'ble Judges : J. C. Doshi, J

Bench : Single Bench

Advocate : Rathin P Raval, Esha S Bhavsar, HK Patel

Final Decision : Allowed

Judgement

J. C. Doshi, J

1. By way of the present petition under Section 438 of the Code of Criminal Procedure, 1973, the petitioner has prayed to release him on anticipatory bail in case of his arrest in connection with the FIR registered as C.R.No.11189005240380 of 2024 registered with Morbi Taluka Police Station, Morbi.

2. Learned advocate for the petitioner submits that considering the nature of allegations, role attributed to the petitioner, the petitioner may be enlarged on anticipatory bail by imposing suitable conditions.

3. 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.

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

5. Having heard the learned counsel for the parties and perusing the record of

the case and taking into consideration the facts of the case, nature of allegations, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to exercise discretion in favour of the petitioner. I have considered the following aspects.

(i) On going through the FIR, it appears that complainant has made allegations that present petitioner and other accused had given money at high interest to the deceased. Even after paying back the amount to the petitioner, the petitioner threatened the deceased and therefore, he committed suicide.

(ii) No ingredients of section 107 of IPC is made out to constitute offence under section 306 of IPC. Since, FIR itself is missing essential ingredient of section 107 being abatement to commit suicide, prima facie charge of offence under section 306 of IPC is not permissible.

(iii) There is no overtact or omission of act which is proximity to commit suicide.

(iv) Learned advocate for the petitioner submits that the petitioner is ready and willing to abide any conditions which may be imposed by this Court.

6. At this juncture, I may refer to decision in case of Mohit Singhal & Anr. vs. The State of Uttarakhand & Ors., rendered in Criminal Appeal No.3578 of 2023 by the Hon'ble Apex Court in regards to allegation of committal of suicide for demanding money and for the offence under Section 306 of the IPC following view is taken by the Hon'ble Apex Court. Paragraph 7 to 10 reads thus:

"7. The suicide note records that the third respondent had borrowed a sum of Rs.60,000/-. According to the deceased, he had paid more than half of the amount to Sandeep. The suicide note records that as he could not pay the rest of the money, the first appellant came to his house and started abusing him. He stated that the first appellant had assaulted him, and therefore, he complained to the police. He further noted that the business of giving money on interest was prospering. He stated that the third respondent is not a prudent woman, and due to her habit of intoxication and due to her conduct, she got trapped in this. In the suicide note, it is further stated that the first appellant has made his life a hell

8. According to the complaint of the third respondent, the incident in her shop of the first appellant threatening and assaulting her and her husband was on 15th June 2017. After that, notice under Section 138 of the Negotiable Instruments Act, 1881, was issued by Sandeep to the deceased on 27th June 2017. The suicide note was written three days after that, on 30th June 2017. The deceased committed suicide three days thereafter. Neither in the complaint of the third respondent nor in the suicide note, it is alleged that after 15th June 2017, the appellants or Sandeep either met or spoke to the third respondent and her deceased husband. Section 306 of the IPC makes abetment to commit suicide as an offence. Section 107 of the IPC, which defines the abetment of a thing, reads thus:

"Section 107 -- Abetment of a thing.- A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.— A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.” (underline supplied)

9. In the facts of the case, secondly and thirdly in Section 107, will have no application. Hence, the question is whether the appellants instigated the deceased to commit suicide. To attract the first clause, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Hence, the accused must have mens rea to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide.

10. In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose. The said incident allegedly happened more than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in the close proximity to the date of suicide. By no stretch of the imagination, the alleged acts of the appellants can amount to instigation to commit suicide. The deceased has blamed the third respondent for landing in trouble due to her bad habits.”

7. It is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon’ble Apex Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be

avoided.

8. This Court while exercising discretion in favour of the petitioner has taken into consideration law laid down by the Apex Court in the case of Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors. [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitutional Bench in the the case of Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab (1980) 2 SCC 665. This Court has also taken into consideration law laid down in the case of Sushila Agarwal v/s. State (NCT of Delhi [(2020) 5 SCC 1].

9. In the result, the present petition is allowed by directing that in the event of petitioner herein being arrested pursuant to FIR registered as C.R.No.11189005240380 of 2024 registered with Morbi Taluka Police Station, Morbi, the petitioner 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 petitioner :

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

(b) shall remain present at concerned Police Station on 26.03.2024 and 27.03.2024 between 10.00 a.m. and 4.00 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 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;

10. If breach of any of the above conditions is committed by the petitioner, the concerned learned Judge will be free to take appropriate action in the matter. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions in accordance with law. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the petitioner on bail. Direct service is permitted.