

(2022) 02 GUJ CK 0082
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 21337 Of 2021

Rajubhai Virabhai Danger

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 24-02-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 34, 120(b), 308, 379, 427
Petroleum And Minerals Pipelines Acquisition Right User Inland Act, 1962 — Section 15 (2), 15(4)
Prevention Of Damage To Public Property Act, 1984 — Section 3
Explosive Substances Act, 1908 — Section 4

Citation : (2022) 02 GUJ CK 0082

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Ashish H Shah, Manan Mehta

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 applicant -accused has prayed for anticipatory bail in connection with the FIR being C.R. No. 11217036210707 of 2021 registered with Varahi Police Station, Dist. Patan, for the offences under Sections 308, 379, 427, 120(b) and 34 of the Indian Penal Code, Sections 15 (2) and 15 (4) of the Petroleum and Minerals Pipelines Acquisition Right User Inland Act, 1962, Section 3 of Damage to Public Property Act and Section 4 of the Explosive Substances Act.

2. Learned advocate for the applicant submits that the applicant is innocent and he has been falsely implicated in the alleged offence. There is no any overt act on the part of the applicant. The applicant is businessman of Rajkot and is not remotely involved in the theft of petroleum products. The applicant has no past

antecedent. Hence, custodial interrogation of the applicant is 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 applicant 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, it appears that the applicant has been roped in the alleged offence on the basis of the statement of co-accused. During the alleged trip of three days, the applicant was not in contact with the co-accused as referred in the FIR. There is no need of recovery or seizure from the applicant and he does not have past antecedent of like nature. Further, the applicant has cooperated with the investigation. In this background, custodial interrogation of the applicant is not found to be essential for the purpose of investigating.

5. Considering the facts and circumstances of the case and the role attributed to the present applicant in the alleged offence, I find no reason to decline pre-arrest bail to the applicant. In the result, the present application is allowed. The applicant is ordered to be released on bail in the event of his arrest in connection with FIR being C.R. No. 11217036210707 of 2021 registered with Varahi Police Station, Dist. Patan 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 03.03.2022 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 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.

7. 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.