

(2020) 07 GUJ CK 0102
In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 10463 Of 2020

Rakesh @ Ghochu Karamchand Talreja	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 31-07-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Gujarat Prohibition Act, 1949 — Section 65(e), 81, 116B

Citation : (2020) 07 GUJ CK 0102

Hon'ble Judges : Sangeeta K. Vishen, J

Bench : Single Bench

Advocate : BH Solanki, Nisha Thakor

Final Decision : Allowed

Judgement

Sangeeta K. Vishen, J

1. Rule. Ms. Nisha Thakor, learned Additional Public Prosecutor, waives service of notice of rule on behalf of the respondent â?" State.

2. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant â?" accused has prayed for

anticipatory bail in connection with First Information Report being Prohibition C.R.No.11191046201041 of 2020 registered with Airport Police Station,

Ahmedabad for the offence punishable under Sections 65(e), 116B, 81 of the Gujarat Prohibition Act.

3. Heard Mr. B.H. Solanki, learned advocate for the applicant and Ms. Nisha Thakor, learned Additional Public Prosecutor, through video conference.

4. The learned advocate for the applicant submitted that the nature of allegations are such for which, custodial interrogation at this stage is not

necessary. It is further submitted that the applicant will make himself available

as and when required by the investigating officer and will also make himself available during the trial and will not flee from justice. Upon instructions, it is stated that the applicant will remain present before the investigating officer on 5.8.2020 and will provide the permanent address. The 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 the investigating agency to file an application before the competent court for remand. It is further submitted that upon filing of such application by the investigating agency, the right of the applicant to be accused to oppose such application on merits may be kept open. It is therefore, submitted that considering the above facts the applicant may be granted anticipatory bail.

5. On the other hand, the Ms. Nisha Thakor, learned Additional Public Prosecutor appearing for the respondent to the State has opposed this application looking to the nature and gravity of the offence. It has been submitted that the applicant, as is discernible from the record, has some criminal antecedent and thus, the present application may not be allowed.

6. Having heard the learned advocates for the respective parties and perusing the material placed on the record as well as considering the facts and circumstances of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to grant the anticipatory bail to the applicant. This court has considered the aspect that, (i) the applicant was not found at the time of commission of offence; (ii) no recovery or discovery was made. Except the statement of the co-accused, nothing adverse is found against the applicant. This court, has also taken into consideration the law laid down by the Apex Court in the case of Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors., reported in (2011) 1 SCC 694, wherein the Apex Court reiterated the law laid down by the Constitution Bench in the case of Shri Gurubaksh Singh Sibbia & Ors., reported in (1980) 2 SCC 665.

7. 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 First Information Report being Prohibition C.R.No.11191046201041 of 2020 registered with Airport Police Station, Ahmedabad, on his executing 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 himself available for interrogation whenever required;

(b) remain present at concerned Police Station on 5.8.2020 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 him 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 not change his 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

(h) 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;

8. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicants. The

applicant shall remain present before the learned Magistrate on the first date of hearing on 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.

9. Needless to say that at the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

10. Rule is made absolute to the aforesaid extent. Registry is directed to communicate this order to the concerned police station through e- mail/fax,

forthwith.