

(2021) 03 GUJ CK 0029

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 4230 Of 2021

Rakeshbhai Dharamshibhai Vaghani

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 04-03-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 120(B), 406, 409, 420, 504, 506(2)

Gujarat Protection Of Interest Of Depositors (In Financial Establishments) Act, 2003 — Section 3

Prize Chits And Money Circulation Schemes (Banning) Act, 1978 — Section 4, 5, 6

Citation : (2021) 03 GUJ CK 0029

Hon'ble Judges : Rajendra M. Sareen, J

Bench : Single Bench

Advocate : Rahul R Dholakia, Jk Shah

Final Decision : Allowed

Judgement

Rajendra M. Sareen, J

RULE. Learned Additional Public Prosecutor waives service of notice of rule on behalf of the respondent—State.

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.105 of 2019 registered with Surat Zone CID Crime Police Station, District: Surat, for the offenses

punishable under Sections 406, 409, 420, 120(B), 504 and 506(2) of the Indian Penal Code, Section 3 of the GPID Act and Sections 4, 5 and 6 of the

Prize, Chits and Money Circulation Act, 1978.

2. Learned advocate for the applicant submits that the alleged offence was committed on 09.12.2017 for which the FIR is filed after two years in

28.05.2019. It is also submitted that neither the applicant was partner of the firm, nor was holding any post in the firm. It is also submitted that the co-accused who is having 49% share in the firm has been enlarged on anticipatory bail in Criminal Misc. Application No.21588 of 2019 vide order dated 13.01.2020, who was also shown absconding and warrant was issued against him and also the other accused have been released on regular bail by the Session Court as well as this Court. It is submitted that the total outstanding amount after investigation came to Rs.4,52,00,000/- and the property worth Rs.4,52,00,000/- has been seized by the Investigating Agency. It is submitted that the present applicant is on better footing than the other co-accused who are granted bail. It is also submitted that learned advocate on instructions of the applicant submits that he will not demand the property back which is seized by the Investigating Agency. It is also submitted that the nature of allegations are such for which custodial interrogation at this stage is not necessary. He further submits that the applicant will keep himself available during the course of investigation, trial also and will not flee from justice.

3. 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. He further submit that upon filing of such application by the Investigating Agency, the right of applicant accused to oppose such application on merits may be kept open.

Learned advocate, therefore, submitted that considering the above facts, the applicant may be granted anticipatory bail.

4. Learned Additional Public Prosecutor appearing on behalf of the respondent â State has opposed grant of anticipatory bail looking to the nature and gravity of the offence.

5. Having heard the learned advocates for the parties and perusing the material 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, I am inclined to grant anticipatory bail to the applicant.

6. This Court has considered following aspects:

(a) it is submitted by the learned advocate for the applicant that other three

alleged partners are enlarged on regular bail either by this Court or by the Sessions Court. Copies of the said orders are placed on record;

(b) it is further submitted that as per the observation made by this Court in the case of co-accused, properties of the concerned co-accused worth

Rs.4,52,00,000/- have been seized by the Investigating Agency as per the provisions of the Gujarat Protection of Interest of Depositors (In Finance Establishment) Act of 2003.

(c) Thus, when the other co-accused against whom similar type of allegations are levelled have been enlarged on bail by this Court, I am inclined to exercise discretion in favour of the applicant;

7. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre Vs.

State of Maharashtra and Ors., reported at [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution

Bench in the case of Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab, reported at (1980) 2 SCC 565.

8. 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 a FIR

being C.R.No.105 of 2019 registered with Surat Zone CID Crime Police Station, District:Surat, on his executing a personal bond of Rs.15,000/-

(Rupees Fifteen 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 15.03.2021 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 his 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; 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;

9. 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.

10. At the trial, the concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.

11. Rule is made absolute to the aforesaid extent. Direct service is permitted.