

(2023) 12 GUJ CK 0091
In the Gujarat High Court

Case No : R/Special Criminal Application (Quashing) No. 16498 Of 2023

Rameshbhai Govindbhai Solanki

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 29-12-2023

Acts Referred:

Indian Penal Code, 1860 — Section 114, 306

Gujarat Money Lenders Act, 2011 — Section 40, 42(d)

Citation : (2023) 12 GUJ CK 0091

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Harshit S Tolia, Jk Shah, Manan Mehta

Judgement

Hasmukh D. Suthar, J

1. Heard Mr. Harshit S. Tolia, learned counsel for the petitioner and Mr.J.K.Shah and Mr. Manan Mehta, learned APPs appearing for the respondent State. Learned advocate Mr. Harshil Dattani and Mr. Abhishek Sharma have instructions to appear on behalf of the original complainant and thereby, seek permission to file their Vakalatnama, which is granted.

2. Rule. Ld. Advocates appearing for the respective respondents waive service of Rule.

3. By way of present petition, the petitioner has prayed for the following main reliefs:-

“(A) Your Lordships be pleased to issue appropriate writ, order or direction and be pleased to quash and set aside the impugned order dated 16.12.2023 passed by the Ld. JMFC, Talala, District Gir-Somnath at Annexure-A thereby granting police remand against the petitioner in connection with FIR being C.R.No.11186007230792/2023 registered with Talala Police Station for the offence u/s. 306, 114 of IPC and U/s. 40, 42(d) of Gujarat Money Lenders Act, in the interest of justice;

(B) Your Lordships be pleased to stay the implementation, operation and execution of the impugned order dated 16.12.2023 passed by the Ld. JMFC, Talala, District Gir-Somnath at Annexure-A thereby granting police remand against the petitioner in connection with FIR being C.R.No.11186007230792/2023 registered with Talala Police Station for the offence u/s. 306, 114 of IPC and U/s. 40, 42(d) of Gujarat Money Lenders Act, pending the admission, hearing and final disposal of this petition, in the interest of justice.”

4. Mr.A.C. Sindhav, Police Sub-Inspector, Talala Police Station, Dist. Gir-Somnath is personally present before the Court.

5. At the outset, learned counsel for the petitioner, on instructions, fairly submits that the petitioner is ready and willing to give his voice sample as well as vehicle in question, which was allegedly used in commission of offence, for the purpose of forensic examination. He further submits that the petitioner will also handover his mobile handset for the said purpose.

6. Ld. advocate Mr. Tolia contended that the petitioner is ready and willing to fully cooperate and will remain present before the investigating officer and therefore, no custodial interrogation of the petitioner is required, that too for getting incriminating evidence by use of third degree and torture.

7. Having heard learned advocates and going through the facts of the case, it appears that the accused had given Rs.5 lacs to the deceased/prosecution witness and against the same, the accused had received two blank cheques/ stamp paper, which need to be recovered from the accused and for that purpose, custodial interrogation is required for some limited time period. Further, accused No.1 was also remanded to the police custody.

8. Considering the submissions made by learned counsel for the respective parties and considering the broad consensus of the learned advocates, without further discussion on merit, period of 3 days custodial interrogation granted by learned Trial Court is hereby reduced to 2 days (48 hours). Further, it is clarified that prior to such 48 hours, if custodial interrogation is over and presence of petitioner is no longer required, then investigating officer is directed to release the petitioner forthwith.

9. Further, investigating officer is directed to scrupulously follow the directions issued by the Hon'ble Supreme Court in the case of D.K. Basu Vs. State of West Bengal, reported in AIR 1997 AIR SC 610 during the custodial interrogation of the petitioner and ensure that no instance of violation of human rights is taken place.

10. With the above observation and direction, present petition is disposed of. The petitioner is directed to remain present before the Investigating Officer on 01.01.2024 at 11.00 a.m. without fail.

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