

(2020) 08 GUJ CK 0075
In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 9356 Of 2020

Rameshbhai Vallabhbhai Gajera

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 120B, 409, 465, 467, 468, 471

Citation : (2020) 08 GUJ CK 0075

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : Vaibhav A Vyas, Pranav Trivedi

Final Decision : Allowed

Judgement

Gita Gopi, J

1. Rule. Mr. Pranav Trivedi, learned Additional Public Prosecutor, waives service of notice of rule on behalf of respondent-State.

2. This application has been preferred under section 438 of the Code of Criminal Procedure for anticipatory bail in connection with the first

information report being I-C.R. No.11203025200588 of 2020 registered with Junagadh Taluka Police Station, Junagadh for the offences punishable

under sections 409, 465, 467, 468, 471 and 120B of IPC.

3. Mr. Vaibhav Vyas, learned advocate for the applicant, submitted that in the year 2015 the applicant had contested the election to the Post of

Sarpanch of Malakhiya Gram Panchayat, Junagadh and the applicant got elected. It was submitted that pursuant to such election, few disgruntled

elements began to make frivolous applications to the authorities concerned alleging irregularities / misappropriation of funds by the applicant. It was

alleged that the applicant had committed certain irregularities with respect to completion of certain works of the Gram Panchayat for the year 2017-

18. It was submitted that the applicant had completed all the works and that whatever allegations would be there, could be considered as procedural

irregularities. To substantiate his say, learned advocate Mr. Vyas produced on record copies of the 'rojnama' showing the completion of relevant

works undertaken by the applicant along with other relevant papers. It was further submitted that there is no allegation of any misappropriation of

funds by the applicant. It was, therefore, prayed that discretion may be exercised in favour of the applicant.

4. Mr. Pranav Trivedi, learned Additional Public Prosecutor appearing on behalf of the respondent "State, vehemently opposed the application by

submitting that the applicant had not followed the mandatory procedure while executing the works. While drawing attention of the Court to the

statement of Pratapsinh Govindsinh Jadeja, Ex-Taluka Development Officer, it was submitted that the relevant approvals are given by the concerned

Engineers in the rung of the hierarchy and that on completion of the works, the certificates are issued by the authorised officers and thereafter, the

payments are made. It was submitted that the UTC-CC document furnished by the applicant were not genuine and on the basis of the forged

documents, the amount had been withdrawn. It was, therefore, prayed that no discretion may be exercised in favour of the applicant.

5. Heard the learned advocates for the parties and perused the material on record. The main allegation against the applicant is of forging the work

completion certificate and of deriving illegal benefits therefrom on the basis of such document. Prima facie, the documents on record, in the form of

'rojnama' as also the technical approvals, show that the works have been completed; however, it appears that certain procedural irregularities have

been committed. Whether the signatures on the alleged documents are genuine or not would be a matter of trial and has to be proved during the trial.

Taking into consideration the facts of the case, nature of allegations and the gravity of offence, this Court is inclined to grant anticipatory bail to the applicant.

6. 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 Honâ??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.

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 the first

information report being FIR No.11203025200588 of 2020 registered with Junagadh Taluka Police Station, Junagadh on 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 themselves available for interrogation whenever required;

(b) shall remain present at concerned Police Station on 20.08.2020 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;

8. 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 applicants, 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. At the trial, the concerned 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. Registry to communicate this order to the concerned Court/authority by Fax or Email

forthwith.