

(2022) 07 GUJ CK 0101
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 12938 Of 2022

Saddamhussain Bachubhai Makrani

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 26-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Gujarat Prohibition Act, 1949 — Section 65(e), 81, 98(2), 116B

Citation : (2022) 07 GUJ CK 0101

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Vijal P Desai, Ishita V Desai, Ronak Raval

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr.Vijal Desai appearing with learned Advocate Ms.Ishita Desai on behalf of the applicant and learned Additional Public Prosecutor Mr.Ronak Raval on behalf of the respondent-State.

2. Rule. Learned APP waives service of rule on behalf of the respondent-State.

3. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant – original accused prays for being released on anticipatory bail in connection with FIR No.11821035220138 of 2022 registered with Limkheda Police Station, District Dahod on 25.4.2022 for offences punishable under Sections 65(e), 116-B, 98(2), 81 of Gujarat Prohibition Act, 1949.

4. Learned Advocate Mr.Desai for the applicant would submit that the nature of allegations are such for which custodial interrogation of the applicant at this stage is not necessary. Learned Advocate Mr.Desai would submit that there is no material on record to connect the present applicant to the offence in question.

Besides, the applicant is available during the course of investigation and will not flee from justice. In view of the above, the applicant may be granted anticipatory bail. Learned Advocate Mr.Desai 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. Learned Advocate would 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.

5. This application has been vehemently opposed by learned Additional Public Prosecutor Mr. Raval appearing on behalf of the respondent-State, who would submit that looking to the nature and gravity of the offence the applicant may not be released on anticipatory bail by this Court.

6. Having heard the learned Advocates for the parties and having perused the investigation papers as well as the documents on record, following aspects are taken into consideration by this Court:

1. That the applicant has been implicated on basis of the statement of the co-accused in whose possession prohibited liquor was found;

2. That while one of the other co-accused mentioned that the vehicle in question, which was used for transporting the prohibited liquor, belongs to the present applicant, but till date it does not appear that the said aspect had been verified by the Investigating Officer;

3. That there is also no detail with regard to the CDR of any connection between accused No.1 and 2, the persons who had transported the prohibited goods and against the present applicant, the allegation being that he was the ultimate receiver of the goods in question;

4. That while there are two antecedents of being involved in criminal activity, it appears that the present applicant had been acquitted in both the offences.

7. Having regard to the circumstances noted above, and considering the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors. reported in (2011)1 SCC 694, this Court is inclined to consider this application.

8. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR No.11821035220138 of 2022 registered with Limkheda Police Station, District Dahod on 25.4.2022, the applicant shall be released on anticipatory bail on furnishing a personal bond of Rs.10,000/- (Rupees Ten Thousand only) with one surety of like amount, on the following conditions that the applicant:

(a) shall cooperate with the investigation and make him available for interrogation whenever required;

(b) shall remain present at the concerned Police Station on 29.07.2022 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 his residence till the final disposal of the case or till further orders;

(f) shall not leave India without the permission of the Court and, if having passports shall surrender the same before the Trial Court within a week;

(g) shall mark his presence on every first Monday of the month for a period of next three months at the concerned Police Station;

9. Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicant to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. 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 Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the applicant on bail. Rule is made absolute to the aforesaid extent. Direct service is permitted.