

(2023) 06 GUJ CK 0089

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 4239 Of 2023

Saiyed Rashidshah Khalidshah

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 21-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 114, 376, 376(2)(n)

Citation : (2023) 06 GUJ CK 0089

Hon'ble Judges : Hemant M. Prachchhak, J

Bench : Single Bench

Advocate : JM Panchal, Soeb R. Bhoharia, Valimohammed Pathan, Tirthraj Pandya

Final Decision : Allowed

Judgement

Hemant M. Prachchhak, J

[1] By way of the present successive application under Section 438 of the Code of Criminal Procedure, 1973, the applicant - original accused has prayed to release him on anticipatory bail in case of his arrest in connection with the FIR registered as C.R No. 11191010211755 of 2021 before Madhavpura Police Station, District: Ahmedabad City for the offences under Sections 376, 376(2)(n), 114 etc of the Indian Penal Code.

[2] Heard Mr.J. M. Panchal, learned senior advocate for Mr.Soeb Bhoharia, learned advocate for the applicant and Mr.Tirthraj Pandya, learned Additional Public Prosecutor for the respondent – State of Gujarat.

[3] Mr.Panchal, learned senior advocate for the applicant submits that the applicant is innocent and has not committed any offence as alleged. He submits that the present applicant had preferred Criminal Misc. Application No.18264 of 2022 before this Court, which came to be disposed of as withdrawn by this Court vide order dated 06.12.2022. He submits that against the order dated

06.12.2022 passed by this Court in Criminal Misc. Application No.734 of 2022, the co-accused whose role is more than the present applicant approached before the Hon'ble Supreme Court by filing Criminal Appeal No.1429 of 2023 which came to be allowed and the co-accused is released on bail vide order dated 09.05.2023. He also submits that the co-accused has cooperated with the investigation and has not misused any liberty granted to him. He submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. He submits that besides the applicant will be available during the course of investigation and will not flee away from the justice. In view of the above, the applicant may be enlarged on anticipatory bail by imposing suitable conditions.

[4] Learned senior 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. Learned senior advocate for the applicant further submits that upon filing of such application by the Investigating Agency, the right of applicant to oppose such application on merits may be kept open.

[5] Learned Additional Public Prosecutor appearing on behalf of the respondent-State has opposed grant of anticipatory bail. Learned APP has submitted that the applicant has committed an offence and considering the nature and gravity of the offence, the applicant may not be released on bail and the present application may be rejected.

[6] Considering the facts of the present case, it appears that the co-accused has preferred Criminal Misc. Application No.734 of 2022 before this Court, which came to be rejected by this Court vide order dated 06.12.2022 and against this order, the co-accused has filed Criminal Appeal No.1429 of 2023 which came to be allowed and he is released on bail vide order dated 09.05.2023 by the Hon'ble Supreme Court. It is relevant to note that the present applicant though married has not disclosed this fact to the prosecutrix while entering into live in relationship agreement wherein such condition no.3 was enumerated.

[7] Having perused the materials 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, this Court is inclined to grant anticipatory bail to the applicant.

[8] This Court has considered following aspects;

(i) The FIR is registered on 19.12.2021 for the offence which is alleged to have taken place between 19.09.2021 to 19.12.2021.

(ii) Learned APP under instructions of IO is unable to bring on record any special circumstances against the applicant.

(iii) The role attributed to the applicant – accused; (iv) That other co-accused is

enlarged on bail by the Hon'ble Supreme Court;

[9] This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Shri Gurubaksh Singh Sibbia & Ors., reported at (1980) 2 SCC 665 and in the case of Sushila Aggarwal Vs. State (NCT of Delhi) reported in AIR 2020 SC 831.

[10] In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR registered as C.R No. 11191010211755 of 2021 before Madhavpura Police Station, District: Ahmedabad City, the applicant shall be released on 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 shall :

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

(b) remain present at concerned Police Station on 28.06.2023 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 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 shall not change 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

(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;

[12] 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. 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. Direct service is permitted.