

(2022) 10 GUJ CK 0067
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 21576 Of 2021

Salimbhai Ismailbhai Talat

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 11-10-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 143, 147, 302, 307, 323, 504, 506(2)
Gujarat Police Act, 1951 — Section 135

Citation : (2022) 10 GUJ CK 0067

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Akash A Singh, Jeet Patel, L B Dabhi, Hriday Buch

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr. Akash A. Singh for the applicant, learned Additional Public Prosecutor Mr. L.B. Dabhi on behalf of the respondent-State and learned Advocate Mr. Jeet Patel on behalf of the first informant.

2. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant prays for being released on anticipatory bail in connection with FIR being C.R. No. 11192018210405 of 2021 registered with Dhandhuka Police Station, District Ahmedabad Rural, on 10.08.2021 for offences punishable under Sections 302, 307, 323, 504, 506(2), 143, 147, 148 and 149 of the Indian Penal Code and Section 135 of the Gujarat Police Act.

3. At the outset, learned Advocate Mr. Singh for the applicant would submit that the original accused No.3 i.e. father of the applicant had preferred an application for being released on anticipatory bail before the learned Sessions Court and whereas upon the said application being rejected, the said accused had preferred an application before this Court being Criminal Misc. Application No. 6655 of

2022 and whereas vide an order dated 28.04.2022, a learned Co-ordinate Bench of this Court had been pleased to reject the same. Learned Advocate Mr. Singh would submit that on the other hand accused No.4 i.e. brother of the present applicant, had neither approached the learned Sessions Court nor surrendered and whereas learned Advocate would submit that pending the present application the accused Nos. 3 and 4 have surrendered before the Investigating Officer.

4. On merits learned Advocate Mr. Singh would submit that the present applicant had not been named as an accused in the FIR and whereas the present applicant is sought to be arraigned as an accused in the charge-sheet, more particularly the applicant being shown as an absconding accused and whereas according to the learned Advocate Mr. Singh, the present applicant is sought to be arraigned as an accused only on the basis of an allegation that the present applicant was one of the conspirators in commission of the crime complained of in the FIR. Learned Advocate Mr. Singh would submit that except for statements of certain witnesses which have been recorded much after the date of the incident, there is no material available to support an allegation of the applicant being a conspirator. Learned Advocate Mr. Singh would submit that the nature of allegations are such for which custodial interrogation of the applicant at this stage is not necessary. 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. Singh 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. Dabhi appearing on behalf of the respondent-State. Learned APP would submit that the charge-sheet clearly names of the present applicant as an absconding accused and whereas there is a specific role which is attributed to the present applicant and whereas considering the same and further considering that the charge-sheet also names the present applicant as a conspirator and looking to the nature and gravity of the offence, the applicant may not be released on anticipatory bail by this Court.

6. This application has also been vehemently opposed by learned Advocate Mr. Jeet Patel, who in addition to adopting the submissions made by learned APP Mr. Dabhi, would draw the attention of this Court to the statement of one Mayuddinbhai @ Jakirbhai Alibhai Shaikh and statement of one Farukbhai Kalubhai Malek. Learned Advocate Mr. Patel would submit that both the statements inter alia reflect the fact that the present applicant was indeed a conspirator and whereas it would also appear according to learned Advocate Mr. Patel, that the present applicant was present at the site of the offence. Having

regard to such submissions and more particularly submitting that the offence alleged is one punishable under Section 302 of the IPC, learned Advocate Mr. Patel has requested this Court not to exercise discretion in favour of the present applicant.

7. Having heard the learned Advocates for the respective parties and having perused the investigating papers as well as documents on record, the following relevant aspects are considered by this Court:

[1] It appears that the FIR had been registered on 10.08.2021 for an incident of 09.08.2021, which specifically names five persons including father and brother of the present applicant, yet neither the present applicant has been named as an accused nor any passing reference having been made with regard to the applicant in the FIR.

[2] While it appears that the present applicant is shown as an absconding accused in the charge-sheet filed by the Investigating Officer on 02.11.2021, it also appears from the counter to the charge-sheet that the allegation against the present applicant was being part of the conspiracy to commit the crime in question. It appears that such an allegation with regard to conspiracy, being attempted to be substantiated by the statements referred to by learned Advocate Mr. Patel i.e. statement of Mayuddinbhai and statement of Farukbhai.

[3] It would be pertinent to mention that the statement of Mayuddinbhai had been recorded approximately 12 days after the incident and whereas statement of Farukbhai appears to have been recorded approximately 35 days after the incident.

[4] It also requires to be mentioned that both the above statements, are with regard to presence of the present applicant at a place different than the place of the incident and whereas the allegation being that the accused had gathered at a particular place and whereas the present applicant was instructing the other accused that they have to proceed towards Ranpur Crossroad since problem was going to happen there.

[5] In the considered opinion of this Court, merely on basis of statements of two witnesses recorded much after the incident, more particularly when there was no reference to the present applicant in the FIR or at the site of the incident, the applicant ought not to be required to undergo custodial interrogation, more particularly for an offence punishable under Section 302 of the IPC. In the considered opinion of this Court, merely by stating that the applicant who was at different place than the place of incident and he was heard saying something, would not be equal to stating that there was material against the present applicant to suggest that he was a part of a conspiracy.

[6] Such oral statement heard by witnesses, where the present applicant states that some problem is going to happen, that too such statements being recorded much late in the day, would not inspire this Court to hold in favour of the

investigation.

8. In this view of the matter 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.

9. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to the FIR being C.R. No. 11192018210405 of 2021 registered with Dhandhuka Police Station, District Ahmedabad Rural, the applicant shall be released on bail on furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety of like amount, on the following conditions that the applicant:

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

(b) shall remain present at the concerned Police Station on 15.10.2022 between 11:00 a.m. and 2:00 p.m.;

(c) shall mark his presence at the concerned Police Station once in a month for a period of six months;

(d) 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;

(e) 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;

(f) 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;

(g) shall not leave India without the permission of the Court and, if having passport shall surrender the same before the Trial Court within a week.

10. 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.

11. 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.