

(2022) 02 GUJ CK 0079

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 4121 Of 2022

Salmaben Nisarbhay Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 25-02-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 114, 409, 411
Essential Commodities Act, 1955 — Section 3, 7

Citation : (2022) 02 GUJ CK 0079

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Krutarth K Desai, Hardik Soni

Final Decision : Allowed

Judgement

A.S. Supehia, J

1. Heard the learned advocates for the respective parties through video conferencing.

2. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973 (for short "the Code"), the applicant has prayed for anticipatory bail in connection with the FIR being C.R. No.11199011210473 of 2021 registered with Bharuch Rural Police Station, District: Bharuch for the offence punishable under Sections 409, 411, 114 of the Indian Penal Code, 1860 and Sections 3 and 7 of the Essential Commodities Act.

3. It is the case of the prosecution that as alleged in the FIR, the complainant being Child Development Officer with Bharuch Taluka Panchayat, upon receiving information, raided the Huts of accused nos.1 to 4 along with the team.

3.1. Upon investigating the spot, officers recovered 1905 packets of THR (Take Home Ration) amounting to Rs.64,470/-as well as 1234 units of empty packets, which were supposed to be distributed to the beneficiaries under ICDS

(Integrated Child Development Scheme) Scheme.

4. Learned advocate for the applicant submits that the name of the applicant has been disclosed in the alleged offence on the basis of the statement of co-accused Javedbhai and she has been falsely implicated in the alleged offence. She has no past antecedent of like nature and custodial interrogation of the applicant is not essential for the purpose of investigation. Under instructions, learned advocate for the applicant states that without prejudice to the rights and contentions of the present applicant, the applicant is ready and willing to deposit an amount of Rs.20,000/-.

5. Learned 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. He further submits that upon filing of such application by the investigating agency, the right of the applicant accused to oppose such application on merits may be kept open. Learned advocate, therefore, submits that considering the above facts, the applicant may be granted bail.

6. Learned Additional Public Prosecutor appearing on behalf of the respondent – State has opposed grant of anticipatory bail stating inter alia that the allegations against the applicant are grave and serious in nature and custodial interrogation is necessary for further investigation of the case.

7. Having heard the learned advocates for the parties and perusing the material 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, I am inclined to grant bail to the applicant.

8. This Court has considered following aspects;

(a) The role of the applicant;

(b) That the applicant was not named in the FIR;

(c) The applicant is a lady accused;

(d) The Coordinate Bench of this Court in the identical similarly situated co-accused has granted bail under the provisions of Section 438 of the Code vide order dated 04.01.2022 passed in Criminal Misc. Application No.13487 of 2021 and vide order dated 21.01.2022 passed in Criminal Misc. Application No.15439 of 2021;

(e) Prima facie considering the facts of the case, the custodial interrogation of the applicant is not necessary at this stage;

9. This Court has also taken into consideration the law laid down by the Apex Court in the cases of Sushila Aggarwal vs. State (Nct of Delhi), AIR 2020 SC 831 and Siddharam Satlingappa Mhetre vs State of Maharashtra, AIR 2011 SC 312.

10. Considering the facts and circumstances of the case and the role attributed to the present applicant in the alleged offence as well as cooperated with the investigation, I find no reason to decline pre-arrest bail to the applicant. In the result, the present application is allowed. The applicant is ordered to be released on bail in the event of her arrest in connection with a FIR being C.R. No.11199011210473 of 2021 registered with Bharuch Rural Police Station, District: Bharuch on her 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 herself available for interrogation whenever required;

(b) shall remain present at concerned Police Station on 07.03.2022 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 her from disclosing such facts to the court or to any police officer;

(d) shall not obstruct investigation and not to evidence collected or yet police;

or hamper the police play mischief with the to be collected by the

(e) shall at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change her residence till the final disposal of the case till further orders;

(f) shall deposit an amount of Rs.20,000/- before the learned trial Court within a period of two weeks' from the date of the receipt of the copy of this order;

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

(h) 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;

11. 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.

12. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

13. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent. Registry is directed to send a copy of this order to the concerned authority/court through Fax message, email and/or any other suitable electronic mode.

14. Learned advocate for the applicant is also permitted to send a copy of this order to the concerned authority/court through Fax message, email and/or any other suitable electronic mode.