

(2019) 06 GUJ CK 0074

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 5007 Of 2019

Sanjaybhai Hariprakash Agrawal

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 17-06-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 34, 114, 149, 294(b), 294(kh), 323, 406, 420, 504, 506(1), 507
Negotiable Instruments Act, 1881 — Section 138
Gujarat Police Act, 1951 — Section 135(1)

Citation : (2019) 06 GUJ CK 0074

Hon'ble Judges : Vipul M. Pancholi, J

Bench : Single Bench

Advocate : RJ Goswami, LB Dabhi, Zubin Bharda, Shivani Rajpurohit

Judgement

Vipul M. Pancholi, J

1. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicants' accused have prayed for anticipatory

bail in connection with the FIR being C.R. No. 23/2019 registered with Odhav Police Station, Ahmedabad for the offenses punishable under

Sections 406, 420, 507, 294(kh) and 114 of the Indian Penal Code.

2. Heard learned advocate, Mr. R.J. Goswami for the applicants, learned APP Mr. L.B. Dabhi for the respondent's State and learned advocate,

Mr. Zubin Bharda assisted by learned advocate, Ms. Shivani Rajpurohit for the original complainant.

3. Learned advocate for the applicants referred to the allegations levelled against the applicants in the FIR in question and, thereafter, submitted that

even as per the averments made in the FIR, the applicants have made certain

payments to the complainant from time to time. Learned advocate, Mr.

Goswami thereafter referred to further affidavit filed on behalf of the applicants and submitted that total amount of Rs.96,25,317/Â has been paid by

the applicants to the complainant from time to time, details of such payments are referred in the further affidavit of the applicants. It is, therefore,

contended that out of Rs.1,20,00,000/Â, an amount of Rs.96,00,000/Â has been paid by the applicants and, therefore, the applicants be enlarged on

anticipatory bail.

4. It is further contended that the dispute between the parties is of civil nature, for which, FIR in question is lodged against the applicants and

maximum punishment prescribed for the alleged offences is of 7 years and, therefore, as per the decision of the Honâ??ble Supreme Court in case of

Arneshkumar Vs. State of Bihar, reported in (2014) 8 SCC 273, the provision contained in the Criminal Procedure Code, 1973 is required to be

followed. It is, therefore, urged that looking to the facts and circumstances of the present case, the applicants be released on anticipatory bail.

5. On the other hand, learned APP Mr. Dabhi has opposed this application and submitted that serious allegations are leveled against the applicants. It

is further submitted that three other FIRs are registered against the applicant no.1. Learned APP has given the details of the said three FIRs.

6. Learned APP has also referred to the statement of the witness, Amit Vijayji Gopiram Mittal recorded on 27.04.2019 and after referring to the

statement of the said witness, it is contended that the averments made in the further affidavit filed on behalf of the applicants that Rs.35,00,000/Â has

been paid by the applicants to the said witness, who was working with the complainant, is not correct. It is further submitted that other 74 complaints

are filed against the applicants under Section 138 of the Negotiable Instrument Act, 1881. It is, therefore, urged that this application may not be

entertained.

7. Learned advocate, Mr. Bharda assisted by learned advocate, Ms. Rajpurohit has also opposed this application. It is submitted that specific

allegations are leveled against all three applicants in the FIR. It is submitted that the complainant has supplied the goods to the applicants more than

worth of Rs.1,70,00,000/Â and some payments were made by the applicants initially, however thereafter as on today, an amount of Rs.1,20,00,000/Â?

is outstanding. It is further submitted that the applicant no.3 has also issued cheques for the outstanding dues, however, the said cheques are

dishonoured. It is also contended that the bank account maintained by the applicants with Bhuj Mercantile Cooperative Bank Ltd. has been closed. It

is also contended that three FIRs are registered against the applicant no.1 and 74 complaints are filed under Section 138 of the Negotiable Instrument

Act, 1881 against the applicants. It is, therefore, urged that this application may not be entertained looking to the antecedents of the applicants.

8. Having heard learned advocates appearing for the parties and having gone through the material produced on record, it has emerged that it is

specifically alleged by the complainant against the present applicants that he has supplied the goods of more than worth of Rs.1,70,00,000/Â to the

applicants and initially, some payments were made by the applicants, however more than Rs.1,20,00,000/Â is outstanding. The applicants have filed

further affidavit, wherein it is stated that Rs.35,00,000/Â has been paid to one of the employees of the complainant viz., Amit Vijayji Gopiram Mittal,

however if the statement of the said witness, Amit Vijayji Gopiram Mittal recorded by the investigating agency is seen, it is revealed that the said

witness has denied the aspect of receipt of Rs.35,00,000/Â? from the applicants on behalf of the original complainant.

9. From the material produced on record and from the investigation papers produced during the course of hearing of this application, this Court is of

the view that there is prima facie case against the applicants. Further, so far as the applicant no.1 is concerned, three different FIRs are registered

against him, details of which are as under,

(1) FIR being C.R. No.IIÂ3273/2016 registered with Dani Limda Police Station on 09.07.2016 for the offences punishable under Sections 323, 294(b),

506(1) and 114 of the Indian Penal Code and under Section 135(1) of the Gujarat Police Act;

(2) FIR being C.R. No.IA253/2017 registered with Ramol Police Station on 18.10.2017 for the offences punishable under Sections 406, 420 and 114

of the Indian Penal Code;

(3) FIR being C.R. No.IIÂ3079/2017 registered with Shahibaug Police Station for the offences punishable under Sections 504, 506(1) and 507 of the

Indian Penal Code.

Thus in view of the above, it is clear that there are antecedents against the applicant no.1

10. It is also not in dispute that the complaints under Section 138 of the Negotiable Instrument Act, 1881 are filed against the applicant no.1 Similarly, more than 70 complaints are also filed under Section 138 of the Negotiable Instrument Act, 1881 against the applicant no.3. It is also evident from the documents produced during the course of hearing of this application that after the issuance of cheques for the outstanding amount, the applicants have closed the account maintained by them with Bhuj Mercantile Cooperative Bank Ltd. Thus, looking to the conduct of the applicants and the antecedents, this Court is not inclined to consider the case of the applicants.

11. At this stage, a decision rendered by the Honâ??ble Supreme Court in the case of Siddharam Satlingappa Mhetre Vs. State of Maharashtra & Ors., reported in (2011) 1 SCC 694 is required to be looked into. The Honâ??ble Supreme Court in the said case has observed in ParagraphÂ112 as under:

â??112.The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice; iv. The possibility of the accused's likelihood to repeat similar or the other offences.

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role

of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should

consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused

to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant

of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an

order of bail.â??

12. Learned advocate for the applicants has placed reliance upon the decision rendered by the Honâ??ble Supreme Court in case of Arneshkumar

(supra), wherein certain guidelines are issued by the Honâ??ble Supreme Court, which are required to be followed by IO at the time of arrest of the

concerned accused. The said direction is binding to the Investigating Officer and there is no reason to believe that the investigating agency in the

present case will not follow the said directions issued by the Honâ??ble Supreme Court before arresting the applicant.

13. Therefore considering the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences,

role attributed to the applicants Â accused and also looking to the punishment prescribed under the Act, I am not inclined to exercise the discretion in

favour of the applicants as the custodial interrogation of the present applicatns is required. Accordingly, the present application stands rejected. Rule is

discharged.

14. After the order is passed, learned advocate, Mr. Goswami for the applicant has requested for continuation of the interim relief granted in favour of

the applicants.

15. However, learned advocate, Mr. Bharda for the original complainant has strong objection for the extension of the interim relief.

16. However considering the facts of the present case and the fact that the interim relief has been in operation since 15.03.2019, the request made by

learned advocate for the applicants is granted in the interest of justice. The protection granted to the applicants is extended upto 05.07.2019.