

(1976) 03 GUJ CK 0001
In the Gujarat High Court

Semabhai Chaturbhai Patel

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 26-03-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 419, 467, 468, 511

Citation : (1977) CriLJ 1523 : (1977) GLR 131

Hon'ble Judges : M.P. Thakkar, J

Bench : Single Bench

Judgement

M.P. Thakkar, J.—Considerations which must be kept on the mental screen and precautions which may be taken in disposing of an application for anticipatory bail u/s 438 of the Criminal P. C., 1973, require to be spelled out in order that the provision is meaningfully applied and judicial discretion is exercised in an appropriate manner in such matters.

2. As was visualized by the Law Commission sometimes false accusations may be levelled against persons just with a view to cause them embarrassment arising out of the social stigma of an arrest and the circumstance that a man has to remain in jail albeit till he is released on bail. It may also happen that the competent authority may place a person (against whom an accusation of having committed a non-bailable offence is levelled) under arrest ; say on the eve of a holi day or at a time when the Courts are closed. The purpose of Section 438 inter alia appears to be to secure that such a person is not obliged to go to jail till he is able to move the Court for being released on bail.

3. Section 438 itself is widely worded and does not engraft any limitations on the power of the Court in case a person who has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence makes an application invoking the powers of the Court for a direction granting anticipatory bail. Even so, the powers have to be exercised in a judicial manner with the end in view that whilst the object of the provision is served the pitfalls inherent in the

situation are eschewed.

4. These powers can be meaningfully exercised provided it is grasped that :--

(1) By the very nature of the proceedings the powers would be invoked during the pendency of an investigation.

(2) The investigation being incomplete it would neither be feasible nor possible to anticipate the material that might be eventually collected.

(3) The Court will not be justified in acting on the hypothesis that no further or more serious material incriminating the accused will be unearthed.

(4) The Court will not exercise the power to enlarge on bail at the stage of pendency of investigation in cases where the Court would be slow to do so after investigations have been completed or closed. In other words, the Court will not be hustled into exercising these powers in cases where the offence is one which is punishable with death or imprisonment for life.

(5) The Court will accord anxious consideration to the relevant factors such as gravity of the offence, nature of the accusation, likelihood of absconding, likelihood of tampering with evidence etc. (the list is illustrative and not exhaustive).

(6) In cases of economic offences where the likelihood" of repetition of the offence whilst on bail cannot be foreclosed, such as, smuggling, hoarding, profiteering, indulging in manipulations of foreign exchange, etc. the Court will not consider it safe to exercise the powers.

(7) If in rare cases the Court considers it unavoidable to pass an order before being able to hear the Public Prosecutor, the Court would have to be careful to expressly and in terms restrict the duration of the order to 2 or 3 days till the Public Prosecutor is heard.

(8) The power cannot be allowed to be invoked in order to defeat, thwart, stall, or render impotent, the provisions relating to remand to police custody for the purposes of facilitating investigation. It may, therefore, be specified in the order that the accused is to be released on anticipatory bail provided he is not required to be remanded to police custody and that if he is so required the police officer would be at liberty to obtain suitable orders from the Court in that behalf either before the arrest or within a reasonable time of the arrest.

(9) The order for anticipatory bail would not be allowed to come in the way of a fuller consideration of the question when the investigation is complete. The order may therefore provide that it will exhaust itself on or will remain operative only till the expiry of say ten days from the date of the arrest and the accused will have to obtain a fresh order in usual course.

(10) The likelihood of the accused being required to be arrested in connection with some other offence may be anticipated and the order may specify the Crime

Register number and the nature and specification of the offence.

(11) To avoid complications, instead of passing an order of unlimited duration the order may provide that it will become inoperative if no arrest is made say within 90 days of the order.

(12) All or any of the conditions engrafted in Section 438(2) of the Cr. P. C. of 1973 may be incorporated in the order.

5. In the present case having regard to the circumstances and the nature of the accusation, I do not see any good reason why the prayer for granting bail in anticipation should not be granted. It is, therefore, directed that in case the petitioner Somabhai Chaturbhai Patel is arrested in connection with an offence relating to the alleged forgery of the deposit receipts of Rs. 28,000/- for offences Under Sections 419, 467 and 468, and 511 of the I. P. C., he shall be released on executing a personal bond in the sum of Rs. 10,000/-with two sureties in the like amount on condition that he will abide by all the conditions specified in Clauses (i) (ii) & (iii) of Sub-section (2) of Section 438 of the Cr. P. C, 1973, all of which conditions shall be treated as conditions on which bail is granted. This order will hold good if the petitioner is arrested at any time till April 26, 1976. The order for release on bail will remain operative only for a period of seven days from the date of his arrest. Thereafter it will be open to the petitioner to make a fresh application for being enlarged on bail which when it comes before the competent Court will be disposed of in accordance with law having regard to all the attendant circumstances and the material available at the relevant time, uninfluenced by the fact that anticipatory bail was granted.

6. The petition is allowed. Rule is made absolute to the aforesaid extent.