

(2022) 09 GUJ CK 0009

In the Gujarat High Court

Case No : Criminal Misc.Application No. 15952 Of 2022

Shaikh Shahnawajkhan Abdulhamid

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 01-09-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Gujarat Prohibition Act, 1949 — Section 65(A)(E), 116(B)

Citation : (2022) 09 GUJ CK 0009

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Nadim Mansuri, O I Pathan, Ronak Raval

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

- 1.. Heard learned Advocate Mr. Nadim Mansuri for learned Advocate Mr. O.I. Pathan on behalf of the applicant and learned Additional Public Prosecutor Mr. Ronak Raval on behalf of the respondent-State.
2. Rule. Learned APP waives service of rule on behalf of the respondent-State.
3. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant – original accused prays for being released on anticipatory bail in connection with FIR No. 11191038220670 of 2022 registered with Vatva Police Station, District: Ahmedabad City on 11.07.2022 for offences punishable under Sections 65(A)(E) and 116 (B) of the Gujarat Prohibition Act.
4. Learned Advocate Mr. Mansuri for the applicant submits that the nature of allegations are such for which custodial interrogation at this stage may not be 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 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 their remand. He 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. Learned Additional Public Prosecutor Mr. Raval on behalf of respondent- State opposed the grant of anticipatory bail looking to the nature and gravity of the offence.

6. Considering the submissions made by learned Advocates for the parties, following aspects are considered by this Court:

[1] That there is no material to link present applicant to the incident in question except secret information.

[2] That the person who was occupant of the premises in question, has not named the present applicant more particularly considering the fact that it is the said occupant who had informed the police authorities about the prohibited liquor having been kept in his premises by some unknown person.

7. Considering the above aspects, though there is an antecedent of the present applicant being involved in a like offence hereinbefore, in view of the fact that there is no material whatsoever, this Court is inclined to consider the application. .

8. Having regard to the circumstances in question, 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 FIR No. 11191038220670 of 2022 registered with Vatva 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:

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

(b) shall remain present at the concerned Police Station on 08.09.2022 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 next three 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 them 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 passports 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.