

**(2022) 02 GUJ CK 0062**

**In the Gujarat High Court**

**Case No : R/Criminal Misc.Application No. 21265 Of 2021**

Sher Mohammed Vali Mohammad Jokhiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

**Date of Decision : 16-02-2022**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 143, 144, 147, 148, 323, 325, 326, 448, 506(1)

Gujarat Police Act, 1951 — Section 135

**Citation : (2022) 02 GUJ CK 0062**

**Hon'ble Judges : Ilesh J. Vora, J**

**Bench : Single Bench**

**Advocate : MM Tirmiz, Krina Calla**

**Final Decision : Allowed**

## Judgement

Ilesh J. Vora, J

1. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant -accused has prayed for anticipatory

bail in connection with the FIR being C.R. No. 11203055210306 of 2021 registered with Shil Police Station, Dist. Junagadh, for the offences under

Sections 326, 325, 323, 448, 506(1), 143, 144, 147, 148 and 149 of the Indian Penal Code, 1860 and Section 135 of the G.P.Act,

2. Learned advocate for the applicant submits that the applicant is innocent and he has been falsely implicated in the alleged offence. There is no

specific role attributed towards the applicant. The applicant was not present at the time commission of alleged offence. Hence, custodial interrogation

of the applicant is not essential for the purpose of investigation.

3. Learned Additional Public Prosecutor appearing on behalf of the respondent

â?" 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.

4. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, it appears that except the name of the applicant referred by the witnesses, nothing brought on record to indicate that the applicant in connivance with the other co-accused has participated in the alleged offence. Co-accused have been enlarged on bail and after investigation against them, chargesheet came to be filed before the competent Court. The applicant has no past antecedent of like nature. In this background, custodial interrogation of the applicant is not found to be essential for the purpose of investigating.

5. Considering the facts and circumstances of the case and the role attributed to the present applicant in the alleged offence, 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 his arrest in connection with FIR being C.R. No. 11203055210306 of 2021 registered with Shil Police Station, Dist. Junagadh on his 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 himself available for interrogation whenever required;

(b) shall remain present at concerned Police Station on 22.02.2022 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 him

from disclosing such facts to the court or to any police officer;

(d) 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;

Â (e) shall at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change their

residence till the final disposal of the case till further orders;

(f) 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

(g) 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;

6. 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.

7. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order. Rule is made absolute to the aforesaid extent. Direct service is permitted.