

(2019) 12 GUJ CK 0077

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 21709 Of 2019

Shitalben Manishbhai Valagiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 26-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 114, 306

Citation : (2019) 12 GUJ CK 0077

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : Harnish V Darji, J. K. Shah

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. This application is filed by the applicants under Section 438 of the Code of Criminal Procedure, 1973 for anticipatory bail in the event of their arrest

in connection with FIR registered at C.R. No.I-127 of 2019 with Gandhigram-2 (University) Police Station, Rajkot City, for the offence punishable

under Sections 306 and 114 of the Indian Penal Code.

2. Learned Advocate appearing on behalf of the applicants would submit that considering the nature of offence, the applicants may be enlarged on

anticipatory bail by imposing suitable conditions.

3. On the other hand, the learned Additional Public Prosecutor appearing for the respondent-State has opposed this application and granting

anticipatory bail to the applicants looking to the nature and gravity of the offence.

4. I have heard the learned advocates appearing for the respective parties,

perused the investigation papers and have also taken into consideration the facts of the case, nature of allegations, role attributed to the applicants-accused. Without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicants. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others, reported at [2011] 1 SCC 6941 w, herein the Hon'ble Apex Court has reiterated the law laid down by the Constitutional Bench in the case of Shri Gurubaksh Singh Sibbia and others, reported at (1980) 2 SCC 665.

Following aspects are also considered:-

(I) The F.I.R. is registered on 13-10-2019 for the offence which is alleged to have taken place on 06-10-2017;

(II) Learned Advocate for the applicants submitted that investigation pertains to suicide of the husband attributed to the cause in the suicide note to the present applicants who are wife, mother in law, father in law respectively. It is submitted that the applicants were residing separately in different town as compare to where the deceased was posted and discharging his duties. Even from the narration in the suicide note, prima facie element of Section-

306 are not made out;

(III) Learned Additional Public Prosecutor under the instructions of the Investigating Officer is unable to bring on record any special circumstances against the applicants.

5. Learned Advocate for the applicants on instructions states that the applicants are ready and willing to abide by all the conditions, including imposition of conditions with regard to the powers of Investigating Agency to file an application before the competent court for his remand. He would further submit that upon filing of such application by the Investigating Agency, the right of the applicants-accused to oppose such application on merits may be kept open.

6. In the result, the present application is allowed by directing that in the event of arrest of the applicants herein in connection with FIR registered as

C.R. No.I-127 of 2019 with Gandhigram-2 (University) Police Station, Rajkot City, the applicants shall be released on bail on their furnishing a

personal bond of Rs.10,000/-(Rupees ten thousands only) EACH with one surety of the like amount on the following conditions that they:

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

(b) shall remain present at the concerned Police Station on 03-01-2020 between 11.00 AM and 02.00 PM;

(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 them

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

(d) shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;

(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 without the permission of Trial Court;

(f) To mark presence once in fifteen days before the concerned Police Station till filing of the charge-sheet

(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 the same on merits;

7. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for Police remand of the applicants. The

applicants 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 applicants, 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.

8. At the trial, the Trial Court shall not be influenced by the prima facie

observations made by this Court while enlarging the applicants on bail.

9. The application is allowed accordingly. Rule is made absolute in the aforesaid terms. Direct service is permitted.