
(2022) 10 GUJ CK 0090

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 16955 Of 2022

Shyambhai Bharatbhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 14-10-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Gujarat Prohibition. Act, 1949 — Section 65(A), 65(E), 98(2), 116B
Indian Penal Code, 1860 — Section 279, 427, 465, 468, 471

Citation : (2022) 10 GUJ CK 0090

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Dhruvin U Mehta, LB Dabhi

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr.Dhruvin Mehta appearing on behalf of the applicant and learned Additional Public Prosecutor Mr.Dabhi on behalf of the respondent-State.

2. Rule returnable forthwith. 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.11200007211338 of 2021 registered with Bhilad Police Station, District Valsad on 22.11.2021 for offences punishable under Sections 65(A), 65(E), 116-B and 98(2) of Prohibition Act and under Sections 279, 427, 465, 468, 471 of IPC.

4. Learned Advocate Mr.Dhruvin Mehta for the applicant would submit that the nature of allegations are such for which custodial interrogation of the applicant at this stage is not 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 Mr.Mehta 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 his remand. Learned Advocate 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. This application has been vehemently opposed by learned Additional Public Prosecutor Mr. Dabhi appearing on behalf of the respondent-State, who would submit that looking to the nature and gravity of the offence the applicant may not be released on anticipatory bail by this Court.

6. Having heard the learned Advocates for the parties and having perused the investigation papers, following aspects are taken into consideration by this Court:

1. It appears that the present FIR has been filed in context of an incident, which had happened on 22.11.2021 at around 21.30 hours, while an I-20 Car, upon being attempted to be intercepted by the police officials, had not stopped and in attempting to escape, had collided with a tree and whereas substantial quantity of prohibited liquor had been found in the said vehicle;

2. The allegation against the present applicant was that the present applicant was driving the car with a fake number plate having been fitted on the car;

3. It appears that the present applicant is stated to be implicated only on the basis of the statement of the co-accused. It also appears that beyond the said statement, there is no other material which would show that the applicant was driving the car in question;

4. It also appears that an FIR had been registered at Palsana Police Station, District Surat on 23.11.2021, more particularly the allegation in the said FIR being that an Eicher Truck had been caught with substantial quantity of prohibited material and whereas it appears that the present applicant had been caught red-handed from the truck being driver of the vehicle. Prima facie it appears that the present applicant could not have been present at both the places at around the same time, more particularly the present FIR being registered for an offence at 21.30 hours with Bhilad Police Station, District Valsad and whereas the present applicant had been caught red-handed a few hours later in Surat while driving another vehicle for like offence.

7. Having regard to the circumstances noted above, 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.

8. In the result, the present application is allowed by directing that in the event

of applicant herein being arrested pursuant to FIR No.11200007211338 of 2021 registered with Bhilad Police Station, District Valsad, the applicant shall be released on anticipatory 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 required; available for interrogation whenever
- (b) shall remain present at the concerned Police Station on 19.10.2022 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;
- (e) 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;
- (f) shall not leave India without the permission of the Court and, if having passport shall surrender the same before the Trial Court within a week;
- (g) shall mark his presence once in every month for a period of next three months at the concerned Police Station;

9. 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.

10. 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.