

(2023) 06 GUJ CK 0103
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 13935 Of 2021

Siddharth Mukesh Bhandari

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 30-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 114, 294(b), 452

Citation : (2023) 06 GUJ CK 0103

Hon'ble Judges : Nirzar S. Desai, J

Bench : Single Bench

Advocate : Nirupam D. Nanavaty, RJ Goswami, Siddharth R Kheskani, Chintan Dave, Shahil A Sarwani

Final Decision : Allowed

Judgement

Nirzar S. Desai, J

1. Rule. Learned APP, waives service of notice of Rule on behalf of respondent-State.
2. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicants - accused have prayed for anticipatory bail in connection with the FIR bearing No.11993001210199 of 2021 registered with Samakhiyari Police Station, Dist. Kachchh East, Gandhidham for the offences punishable under Sections 452, 294(b) and 114 of the Indian Penal Code.
3. Learned advocate for the applicants submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. He further submits that the applicants will keep themselves available during the course of investigation, trial also and will not flee from justice.
4. 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 powers of Investigating Agency to file an application

before the competent Court for their remand. He further submit that upon filing of such application by the Investigating Agency, the right of applicants accused to oppose such application on merits may be kept open. Learned advocate, therefore, submitted that considering the above facts, the applicants may be granted anticipatory bail.

5. Learned Additional Public Prosecutor appearing on behalf of the respondent – State has opposed grant of anticipatory bail looking to the nature and gravity of the offence.

6. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicants.

7. This Court has considered following aspects,

(i) only allegation against present applicant is of tress pass and even as per the FIR, there are no allegation of any violent act on the part of the present applicant or even slap was given to the any of the employees of the complainant's company;

(ii) the applicant is an industrialist who is the director of the company which is the subject matter of dispute;

(iii) the first informant is the real brother of the complainant and there are, various litigation and complaints of Civil and Criminal nature going on between them and prima-facie it seems that this FIR is nothing but an attempt to show one-upmanship against each other;

(iv) applicant has shown willingness to co-operate in the investigation;

(v) though the relief is operating against the applicant since 2021, nothing adverse has come against the present applicant, that he has not complied with the order of the Court or he has not co-operating with the investigation;

(vi) one of the applicant happens to be the director of the company, who is the brother of the original complainant and remaining applicants are the people who alleged to have accompanied to him.

8. In the facts and circumstances of the present case, since the custodial interrogation of the applicants are not required, I am inclined to consider the case of the applicants.

9. 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 Ors., reported at [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab, reported at (1980) 2 SCC

565.

10. In the result, the present application is allowed. The applicants are ordered to be released on bail in the event of their arrest in connection with FIR bearing No. 11993001210199 of 2021 registered with Samakhiyari Police Station, Dist. Kachchh East, Gandhidham on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) each with one surety each of like amount on the following conditions:

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

(b) shall remain present at concerned Police Station on 06.07.2023 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 residence till the final disposal of the case till further orders;

(f) shall not leave India without the permission of the concerned trial court and if having passport shall deposit the same before the concerned 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;

11. 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.

12. At the trial, the concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.

13. Rule is made absolute to the aforesaid extent.