

(2020) 08 GUJ CK 0028
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9563 Of 2020

Sohilkhaon Iqbalkhan Malek

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438, 482
Indian Penal Code, 1860 — Section 114, 406, 420

Citation : (2020) 08 GUJ CK 0028

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : Y J Patel, Pranav Trivedi

Final Decision : Allowed

Judgement

Gita Gopi, J

1. Rule. Mr. Pranav Trivedi, learned Additional Public Prosecutor, waives service of notice of rule on behalf of the respondent-State.

2. This application has been preferred under section 438 of the Code of Criminal Procedure seeking anticipatory bail in connection with the first

information report being FIR No.11211014200039 of 2020 registered with Dasada Police Station, Surendranagar for the offences punishable under

sections 406, 420 and 114 of IPC.

3. Mr. Y.J. Patel, learned advocate for the applicant, has placed on record two affidavits dated 06.07.2020 executed by Patel Hiraben Popatbhai, who

is the original complainant, to submit that the parties have settled the dispute amicably outside the Court and that the original complainant has already

received the disputed amount of Rs.50 Lacs. It is further averred in the said affidavit that the original complainant has no objection if the applicant is

released on anticipatory bail. It is further submitted that co-accused - Malek Mahebubhai Rahematbhai has been released on regular bail by this

Court vide order dated 20.07.2020 passed in Criminal Misc. Application No.9438 of 2020 and therefore, requested that the applicant herein may be

released on anticipatory bail on the ground of parity. It was, therefore, prayed that discretion may be granted in favour of the applicant.

4. Learned Additional Public Prosecutor appearing on behalf of the respondent â?" State has opposed the grant of anticipatory bail looking to the

nature and gravity of offence. It was submitted that the applicant herein had earlier filed an application under section 482 of Cr.P.C. being Criminal

Misc. Application No.6420 of 2020 wherein, this Court had passed an interim order dated 05.06.2020 whereby, the applicant was granted the

opportunity to deposit a sum of Rs.50 Lacs to show his bona fides. However, the applicant had not availed of the said opportunity and ultimately, the

said application came to be disposed of as withdrawn. It was, therefore, prayed that no discretion may be exercised in favour of the applicant.

5. Heard the learned advocates for the parties and perused the material on record. It appears from the affidavits dated 06.07.2020 of the original

complainant executed before the Notary concerned that the original complainant has received Rs.50 Lacs from the applicant and that the dispute has

been amicably settled between the parties. In the affidavits, it is also averred that the original complainant does not have any objection if the applicant

is released on bail. Taking into consideration the facts of the case, nature of allegations and the gravity of offence, this Court is inclined to grant

anticipatory bail to the applicant.

6. This Court has also taken into consideration the law laid down by the Honâ??ble Apex Court in the case of Siddharam Satlingappa Mhetre Vs.

State of Maharashtra and Ors., reported at [2011] 1 SCC 694, wherein the Honâ??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.

7. 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 the first

information report being FIR No.11211014200039 of 2020 registered with Dasada Police Station, Surendranagar on executing a personal bond of

Rs.10,000/- (Rupees Ten Thousand Only) with one surety of like amount and 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 17.08.2020 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 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;

8. 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.

9. At the trial, the concerned 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. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.