

(2002) 03 GUJ CK 0039

In the Gujarat High Court

Case No : Misc. Criminal Application No. 9023 of 2001

State of Gujarat

APPELLANT

Vs

Sushilaben Prabhudas Tanna

RESPONDENT

Date of Decision : 11-03-2002

Acts Referred:

Constitution of India, 1950 — Article 235
Criminal Procedure Code, 1973 (CrPC) — Section 439, 439(2)
Penal Code, 1860 (IPC) — Section 304B, 306

Citation : (2002) 2 GLR 1526

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : K.C. Shah, Asstt. Public Prosecutor, for the Appellant; Notice served, for the Respondent

Final Decision : Allowed

Judgement

B.J. Shethna, J.—The State of Gujarat has filed this Misc. Criminal Application against the impugned common judgment and order dated 28-9-2001 passed by Shri V. B. Mayani, learned Additional Sessions Judge, Jamnagar in Misc. Criminal Application No. 478 of 2001 and Misc. Criminal Application No. 479 of 2001, whereby the learned Judge rejected the Misc. Criminal Application No. 479 of 2001 filed by accused Kamlesh Prabhudas Tanna but allowed the application filed by accused Sushilaben Prabhudas Tanna, who is aged 57 years and ordered to release her on bail for the offences punishable under Sections 304-B, 498-A, 306/34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, registered as Crime Register No. I-430 of 2001 with Jamnagar City B Division Police Station.

2. Shri K. C. Shah, learned A.P.P., for the applicant vehemently submitted that in the instant case, the same learned Additional Sessions Judge, Shri V. B. Mayani dismissed the anticipatory bail application being Misc. Criminal Application No. 468 of 2001 filed by the respondent-accused Sushilaben Prabhudas Tanna just

before 9 days of grant of her regular bail application being Misc. Criminal Application No. 478 of 2001. While rejecting the anticipatory bail application filed by the respondent-accused, the learned Additional Sessions Judge by his speaking order running into 9 typed pages observed that there was a very strong prima facie case against the accused, therefore, though she is a lady accused she could not have been released on bail. Mr. Shah further submitted that in Para 8 of his earlier order dated 19-9-2001, the learned Additional Sessions Judge in no uncertain terms observed that, "merely because 2 minor children of deceased Sandhya who are aged 3 years and 7 months only and. that there is no one to look after them would not be a ground to release the accused Sushilaben on bail". In spite of this clear observations by the learned Judge, for the reasons best known to him, within 9 days, granted regular bail application of the respondent-accused Sushilaben by observing in Para 13 of his impugned judgment that, "When the earlier bail application of Sushilaben was rejected, small children of deceased Sandhya were not in jail but now they are in jail, therefore, there is a change in circumstance, and therefore, she should be enlarged on bail". Mr. Shah submitted that this reasoning assigned by the learned Judge for releasing the respondent-accused on bail runs contrary to what he observed in his earlier order dated 19-9-2001 while dismissing the anticipatory bail application filed by the respondent-accused wherein he had clearly observed in Para 8 of his judgment that there is no one to look after the minor children of deceased Sandhya would not be a ground to release her on bail. He also submitted that the grandfather of minor children and father of deceased Sandhya has already claimed the custody of his grand children i.e. children of his daughter Sandhya in the bail application submitted by the respondent-accused Sushilaben but without considering the same, the learned Judge has released her on bail only on the ground that minor children had to stay in jail along with accused Sushilaben. He, therefore, submitted that the impugned order of releasing the respondent-accused on bail should be quashed and set aside.

3. In the instant case, the respondent is duly served with the notice issued by this Court, but no one appears for her, therefore, this bail application is decided in her absence after hearing learned A.P.P. Shri Shah.

4. At the outset, it may be stated that along with this application for cancellation of bail, certified copy of the previous judgment and order dated 19-5-2001 passed by Shri V. B. Mayani, Additional Sessions Judge, Jamnagar in Misc. Criminal Application No. 468 of 2001 for anticipatory bail filed by Sushilaben was not annexed which is now produced on record by learned A.P.P. Shri K. C. Shah. The earlier order of rejection of anticipatory bail application was passed on 19-9-2001 which runs into 9 typed pages wherein the learned Judge considered the judgment of this Court in the case of Ilaben Vs. State of Gujarat, . In that case, the accused was granted bail on the ground that she had minor children. That was not the case in the instant case, therefore, the learned Judge refused to grant anticipatory bail. The learned Judge also considered the judgment of the

Honourable Supreme Court reported in 2001 Criminal Law Journal, wherein the Honourable Supreme Court has granted bail on the ground that the lady-accused was an old one who was convicted and sentenced for committing murder of her own daughter-in-law whose bail application for looking after her grand children was rejected wherein the Honourable Supreme Court granted bail on the ground that the accused was in jail for a long time and it would take time for final disposal of her appeal filed against the order of conviction and sentence passed by the learned Judge, However, the learned Judge found that the aforesaid judgment of the Honourable Supreme Court has no relevance on the facts of this case, therefore, he rejected the anticipatory bail application as in the instant case, the accused Sushilaben was not making any demand of the custody of her own grand children but she wanted to look after small children of deceased Sandhya her daughter-in-law and on such ground, the accused cannot be granted anticipatory bail.

5. The learned Judge also considered the judgment of this Court reported in Solanki Ravibhai Dipubhai and Others Vs. State of Gujarat and Another, wherein it has been held that, "Ordinarily when the accused who can be granted regular bail in such type of cases, the accused should be granted anticipatory bail". Having considered that judgment, the learned Judge found that this was not the case of granting regular bail, and therefore, there was no question of granting anticipatory bail.

6. Surprisingly, within 9 days of passing of the earlier order of rejecting anticipatory bail application of respondent-accused, the same learned Additional Sessions Judge Shri V. B. Mayani of Jamnagar has granted regular bail only on the ground that the small children of deceased Sandhya had to remain in jail along with their grand mother - accused Sushilaben. This finding runs absolutely contrary to a clear cut finding recorded by him while deciding anticipatory bail application.

7. In the instant case, the respondent-accused is not appearing either in person or through her Advocate though she is duly served with the notice for cancellation of bail issued of this Court in this petition. I am conscious that when the learned Judge exercises his discretionary power of grant of bail, then ordinarily, this Court would not interfere in an application filed for cancellation of bail unless and until a special case is made out to interfere with such orders. As stated earlier, the facts of this case are not only glaring, but also shocking. The learned Judge, who himself rejected the anticipatory bail application just 9 days before the grant of regular bail application, has entered into an arena which was forbidden under law by going into the merits and demerits of the case. Having gone through the same, he has come to a conclusion that there was a strong prima facie case against the accused and that the circumstances narrated in her anticipatory bail application do not warrant any grant of anticipatory bail and according to him it was not a case of even regular bail which could be granted in a regular bail application. But, surprisingly, within 9 days, on the same facts, the

learned Judge took a somersault and granted regular bail only on the ground that the minor children of deceased Sandhya had to remain in jail along with their grand mother - accused Sushilaben. The learned Judge who earlier rejected the anticipatory bail application of the respondent-accused was very much conscious and aware of this fact when he rejected her anticipatory bail application. In spite of it, he granted regular bail, which was not only highly improper but illegal. In my considered opinion, no reasonable man on earth would take different view of the matter like this Judge.

It must be stated that the learned Judge has conveniently overlooked the objections raised by the grand father of minor children and father of deceased Sandhya regarding grant of bail to the accused and his claim regarding custody of minor children to be handed over to him during the pendency of the case and they should not be kept in jail along with accused Sushilaben. There is not even a whisper in his order of granting bail.

The way in which the learned Judge has granted regular bail to the accused has left us much to desire. It prima fade shows that there is an oblique motive in passing such order for which departmental inquiry should be initiated against him. Suffice it to say, that this is a case which squarely falls within the criteria laid down by the Honourable Supreme Court for setting aside the discretionary order of bail granted by the learned Judge in favour of the respondent-accused.

8. In view of the above discussion, this application is allowed. The impugned judgment and order dated 20-9-2001 passed by the Additional Sessions Judge, Jamnagar in Misc. Criminal Application No. 478 of 2001 filed by the respondent-accused Sushilaben Prabhudas Tanna is hereby quashed and set aside. Accordingly, she is ordered to be taken into custody forthwith. The Investigating Officer shall arrest and take her into custody forthwith.

9. The Registrar of this Court is directed to place copy of mis order along with the copy of the earlier anticipatory bail application i.e. Misc. Criminal Application No. 468 of 200i decided on 19-9-2001 and copy of regular bail application i.e. Misc. Criminal Application No. 478 of 2001 decided on 28-9-2001 before the learned Chief Justice for taking appropriate action by way of departmental inquiry in the matter against Shri V. B. Mayani, Additional Sessions Judge, Jamnagar at the earliest.