

(2022) 11 GUJ CK 0091
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 13749 Of 2022

Sunil Odharsinh Gohil

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 23-11-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 114, 363, 366

Citation : (2022) 11 GUJ CK 0091

Hon'ble Judges : Hemant M. Prachchhak, J

Bench : Single Bench

Advocate : Krunal G Patel, CM Shah

Final Decision : Allowed

Judgement

Hemant M.Prachchhak, J

[1] By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant - original accused has prayed to release him on anticipatory bail in case of his arrest in connection with the FIR registered as C.R No. 11195044220336 of 2022 before Shihori Police Station, District: Banaskantha for the offences under Sections 363, 366 and 114 etc. of the Indian Penal Code.

[2] Heard learned advocate for the applicant and learned Additional Public Prosecutor for the respondent – State.

[3] Learned advocate for the applicant submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. He has submitted that the applicant has given shelter to the main accused and the prosecutrix and flee away from his motorcycle. He has also submitted that the othe accused has been released on anticipatory bail by this Court vide order dated 21.06.2022 passed in Criminal Misc. Application No.8557 of 2022. Besides the applicant will be available during the course of investigation and will not flee

away from the justice. In view of the above, the applicant may be enlarged on anticipatory bail by imposing suitable conditions.

[4] Learned advocate 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 for the applicant further submits that upon filing of such application by the Investigating Agency, the right of applicant to oppose such application on merits may be kept open.

[5] Learned Additional Public Prosecutor appearing on behalf of the respondent-State has opposed grant of anticipatory bail on the grounds that considering the nature and gravity of the offence. She has submitted that the original accused along with the minor girl are still absconded and yet not traced by the Investigating Officer.

[6] Having perused the materials 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, this Court is inclined to grant anticipatory bail to the applicant.

[7] This Court has considered following aspects;

(i) The FIR is registered on 11.04.2022 for the offence which is alleged to have taken place between 09.04.2022 to 11.04.2022.

(ii) Considering the fact that the applicant is protected against arrest vide order dated 21.09.2022 which has continued from time to time.

(iii) Learned APP under instructions of IO is unable to bring on record any special circumstances against the applicant.

(iv) The role attributed to the applicant – accused;

(v) That other co-accused are enlarged on bail;

[8] This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Shri Gurubaksh Singh Sibbia & Ors., reported at (1980) 2 SCC 665 and in the case of Sushila Aggarwal Vs. State (NCT of Delhi) reported in AIR 2020 SC 831.

[9] In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR registered as C.R No. 11195044220336 of 2022 before Shihori Police Station, District: Banaskantha, the applicant shall be released on 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 shall :

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

(b) remain present at concerned Police Station on 06.12.2022 between 11.00 a.m. and 2.00 p.m.;

(c) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade from disclosing such facts to the court or to any police officer;

(d) 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) 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) not leave India without the permission of the Court and if having passport shall deposit the same before the 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;

[10] 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. 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. Direct service is permitted.