

(2020) 07 GUJ CK 0007

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 8788 Of 2020

Sureshbhai Bharatsinh Thakor

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 06-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 21
Code Of Criminal Procedure, 1973 — Section 438, 439
Gujarat Prohibition Act, 1949 — Section 65(A), 81, 98(2)
Indian Penal Code, 1860 — Section 406, 420, 465, 471

Citation : (2020) 07 GUJ CK 0007

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : Imtiyaz I Mansuri, Jk Shah

Final Decision : Dismissed

Judgement

Ashutosh J. Shastri, J

1. This application has been filed by accused Sureshbhai Bharatsinh Thakore seeking anticipatory bail under Section 438 of the Code of Criminal

Procedure, 1973, in connection with a complaint, being C.R. No.11187002200452/2020 lodged before Balasinor Police Station, District Mahisagar

under Sections 65(A), 98(2) and 81 of the Gujarat Prohibition Act and Sections 406, 420, 465 and 471 of the Indian Penal Code.

2. Pursuant to the aforesaid complaint, the applicant apprehending his arrest had submitted an application before learned Sessions Judge, Mahisagar at

Lunavada, being Criminal Misc. Application No.217 of 2020, which came to be rejected vide order dated 1.6.2020. As a result of this, present

application is submitted before this Court.

3. Pursuant to the notice being issued, vide order dated 26.6.2020, learned APP Mr. J.K. Shah has received instruction. Hence, the matter is taken up for hearing.

4. Learned advocate Mr. I.I. Mansuri appearing for the applicant has submitted that the applicant is not named in the FIR and as an afterthought measurement, attribution is made against the present applicant. Looking to the assertion made in the complaint, there is no specific role attributed to the applicant and he being not the main accused, may kindly be released on anticipatory bail. It has further been contended by learned advocate Mr.

Mansuri that in this case, there is a report attached to the application at page 6/ B that In-charge Police Inspector Mr. P.J. Pandya has specifically

reported that the name of the present applicant is wrongly mentioned by way of copy-paste mistake and has requested that his name may not be

incorporated in the FIR. This report dated 28.4.2020 is sufficient enough to indicate the innocence of the present applicant. Additionally, Mr. Mansuri

has submitted that the main accused persons, i.e. Irfankhan Yusufkhan Pathan has been released by this Court on regular bail under Section 439 of

Cr.P.C. vide order dated 18.5.2020 in Criminal Misc. Application No.6757 of 2020. Additionally, one another order also came to be passed for release

on anticipatory bail on 12.6.2020 in respect of Salmankhan Pathan, which is reflecting on page 10 and as such, since the main accused who are

suppliers have been extended the benefit of anticipatory bail as well as regular bail, so on the basis of principle of parity, the case of the present

applicant be considered in the interest of justice. Much emphasis has been made by learned advocate Mr. Mansuri about the principle of parity and he

has reiterated the request to grant anticipatory bail to the present applicant. No other submissions have been made.

5. To the aforesaid submissions, learned APP Mr. J.K. Shah appearing on behalf of the respondent-State has submitted that the present applicant is

the main accused and is the person who has requested the other accused persons to bring huge quantity of liquor. Apart from that, Mr. Shah has also

further submitted that if the present applicant must not have requested to supply, those persons could not have brought huge quantity of liquor/

contraband material and further it has been contended that, at present, the investigation is at a crucial stage and if this local accused, i.e. the present

applicant, is enlarged, this would seriously prejudice the case of the prosecution. It has further been submitted that the FIR is not an encyclopedia and

therefore, even if there is no specific role attributed to the present applicant, at this stage, it should not be accepted as has been contended by learned

advocate for the applicant. It has further been submitted that the present applicant has till date not cooperated with the investigating agency and as

such, the anticipatory bail may not be extended since the same is to be granted only in the rare cases. Mr. Shah has further submitted that the

investigation would reveal that there are some antecedents of the present applicant as well and according to his instruction, specific name has been

referred to of the present applicant. Hence, at this stage of proceedings, no protection be given to the present applicant.

5.1. Additionally, with respect to the reliance, which has been placed on the report of In-charge Police Inspector Mr. P.J. Pandya, Balasinor Police

Station, the same is not that of much significance, particularly when the recent LCB In-charge Police Inspector has given a specific report on

30.6.2020, referred to the Public Prosecutor, which is produced on record, and the said report has clearly indicated that there is an active role played

by the present applicant in commission of the crime and as such, the contention that his name is not referred in the FIR is of no consequence.

Pursuant to instructions of higher authority, detailed specific report was available in which narration of conduct, role and participation of the applicant

surfaced.

5.2. Apart from that, the report which has indicated that it is the present applicant who is the main person who called for muddamal articles which are

contraband in the State of Gujarat and further there are three other criminal antecedents of this kind of offence against the present applicant which

are lodged before Balasinor Police Station itself. It has been submitted that three offences are already lodged against this very applicant, namely C.R.

No.303 of 2017, C.R. No.40 of 2018 and C.R. No.314 of 2019 lodged before Balasinor Police Station for this very prohibition offences and as such,

the present applicant cannot be compared with other co- accused even if those have been extended the protection and as such, looking to the role

which has been specifically surfaced in the report submitted by In-charge Police Inspector Mr. M.K. Malavia and looking to the criminal antecedents

of this very offence, this is not a fit case in which anticipatory bail be granted.

5.3. Additionally, Mr. Shah has further relied upon the recent decision of the Apex Court in the case of P. Chidambaram Vs. Directorate of

Enforcement reported in 2019(0) AIJEL-SC- 64814 on the issue of scope of Section 438 of the Code and after referring to the relevant paragraphs of

the said decision, this application has been vehemently opposed.

6. Having heard learned advocates appearing for the parties and having gone through the material on record placed before this Court, prima facie it

appears that the present applicant is having criminal antecedents of this kind of very activities and is arraigned in three other offences of prohibition

cases. So far as the present case is concerned, though his name has not been referred to in FIR, but it has been revealed that the present applicant is

the person who requested the suppliers to bring huge quantity of muddamal liquor and it is at the instance of the present applicant, those persons

appeared to have brought the muddamal. Looking to the quantity of English liquor, which has been seized, this Court is not inclined to exercise the

discretion in favour of the present applicant. In the State of Gujarat, as a part of strict adherence to the policy of the Prohibition, such kind of offences

are not possible to be ignored by this Court while exercising the discretion, more particularly when the applicant before this Court is having criminal

antecedents of this kind of very offence.

7. As a normal Rule, anticipatory bail applications are to be entertained in rare cases and the principle which has been laid down by the Apex Court in

respect of exercise of the discretion under Section 438 of the Cr.P.C. is well propounded by now. As a result of this, keeping those principles in mind,

this Court is not inclined to consider the request of the present applicant.

8. So far as the parity aspect is concerned, looking to the orders passed by the Coordinate Bench, one order which has been passed under Section 439

of Cr.P.C. with respect to Irfankhan Pathan in which this Court had no occasion to deal with the criminal antecedents of the said accused and with

respect to another order passed on 12.6.2020 also, this kind of situation and circumstance appear to be not prevailing in respect of another co-accused,

i.e. Salmankhan Pathan, and as such, the present applicant having criminal antecedents of this kind of very offences and by this time, the role is clearly

visible prima facie from the report which has been submitted on 30.6.2020, the

Court is not inclined to exercise the discretion. Apart from that, there is huge quantity of liquor which has been seized and the present applicant is none other than the person who called the said material from other co-

accused. No case is made out for grant of any anticipatory bail at this stage, particularly when the investigation is at a crucial stage.

9. Additionally, the scope of anticipatory bail which has been narrated by the Apex Court in the recent decision, which has been cited by learned APP

and precisely considering the observations which have been made in the said decision in para 67, 70, 73 and 75, this Court is not inclined to exercise

the discretion and hence no case is made out by the present applicant to grant anticipatory bail application. Paragraphs 67, 70, 73 and 75 of the

decision in the case of P. Chidambaram (*supra*) since considered by this Court, relevant extracts are reproduced hereinafter:-

67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power

under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted

only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and

gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant

of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising

such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is

convinced that exceptional circumstances exist to resort to that extraordinary remedy.

70. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C. is to safeguard the individual's personal

liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must

also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate

balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be

said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.

73. Observing that the arrest is a part of the investigation intended to secure several purposes, in *Adri Dharan Das v. State of W.B.* (2005) 4 SCC

303, it was held as under:-

“19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in

detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime.

There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his

freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime,

to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process

of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is

well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere

with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing

with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section

438 of the Code.”

75. After referring to *Siddharam Satlingappa Mhetre* and other judgments and observing that anticipatory bail can be granted only in exceptional

circumstances, in *Jai Prakash Singh v. State of Bihar and Another* (2012) 4 SCC 379, the Supreme Court held as under:-

“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must

record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the

applicant has falsely been enroled in the crime and would not misuse his liberty. (See *D.K. Ganesh Babu v. P.T. Manokaran* (2007) 4 SCC 434, State

of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305.)â??

Of-course, the said judgment is in different background of facts but analogy on Section 438 is propounded which deserves to be applied while

exercising discretion under Section 438 of Cr.P.C.

Â 10. From the above observations and circumstances, present application fails and the same is hereby rejected. Notice is discharged.