

(2021) 09 GUJ CK 0041

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 13165 Of 2021

Sureshbhai Valabhai Bhambhi (Parmar)

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 14-09-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 114, 323, 376, 376(1), 450, 506(2)

Gujarat Police Act, 1951 — Section 135

Citation : (2021) 09 GUJ CK 0041

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : Vicky B Mehta, Palak G Jadeja, L.B.Dabhi

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. This is an application by the applicant under Section 438 of the Code of Criminal Procedure, 1973 for anticipatory bail in the event of his arrest in connection with FIR registered at C.R. No.I-11209020211137 of 2021 before Idar Police Station, Sabarkantha for the offence under Sections 376(1), 450, 323, 506(2) and 114 of the Indian Penal Code and under Section 135 of the Gujarat Police Act.

2. Learned advocate appearing on behalf of the applicant would submit that considering the nature of offence, the applicant may be enlarged on anticipatory bail by imposing suitable conditions.

3. On the other hand, the learned APP appearing for the respondent-State has opposed this application and granting anticipatory bail to the applicant looking to the nature and gravity of the offence.

4. I have heard the learned Advocates appearing for the respective parties and perused the investigation papers and have also taken into consideration the facts

of the case, nature of allegations, role attributed to the applicant-accused and without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicant. 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. as reported at [2011] 1 SCC 6941, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitutional Bench in the case of Shri Gurubaksh Singh Sibbia & Ors., as reported at (1980) 2 SCC 665.

5. Following aspects are also considered:-

I. The FIR is registered on 16.06.2021 for the offence which is alleged to have taken place on 14.06.2021.

II. Submission of learned advocate for the applicant that prior to the registration of FIR, on account of assault made by the son and nephew of the prosecutrix, the applicant had registered an FIR on 15.06.2021 for an incident which occurred allegedly on 14.06.2021. Though incident alleged to have taken place on 14.06.2021, present FIR is registered on 16.06.2021 i.e. after a period of two days.

III. Submission of learned advocate for the applicant that the involvement of the wife of the applicant and the son of the applicant in the present FIR is unnatural particularly considering the nature of allegations of Section 376 of IPC against the applicant.

IV. Submission of learned advocate for the applicant that even from the allegations made in the FIR and the manner in which the incident took place, element of consensual relationship cannot be ruled out particularly considering the applicant and the prosecutrix being neighbours and being adults.

V. No antecedents are reported against the applicant as per learned advocate for the applicant.

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

6. Learned Advocate for the applicant on instructions states that the applicant is ready and willing to abide by all the conditions, including impositions of conditions with regard to the powers of Investigating Agency to file an application before the competent court for his remand. He would further submit that upon filing of such application by the Investigating Agency, the right of applicant accused to oppose such application on merits may be kept open.

7. In the result, the present application is allowed by directing that in the event of arrest of the applicant herein in connection with FIR registered at C.R. No.I-11209020211137 of 2021 before Idar Police Station, Sabarkantha, the applicant shall be released on bail on his furnishing a personal bond of Rs.10,000/-(Rupees ten thousands only) with one surety of the like amount on

the following conditions that he shall:

- (a) shall cooperate with the investigation and make available for interrogation whenever required;
- (b) shall remain present at the concerned Police Station on 20.09.2021 between 11.00 AM and 02.00 PM;
- (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 from disclosing such facts to the court or to any police officer;
- (d) shall not obstruct or hamper the police investigation and shall 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 without the permission of Trial Court;
- (f) To mark presence once in month before the concerned Police Station till filing of the charge-sheet;
- (g) shall not leave India without the permission of the Trial Court and if having passport, shall deposit the same before the Trial Court within a week; and
- (h) 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 the same 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 Trial Court shall not be influenced by the prima-facie observations made by this Court while enlarging the applicant on bail. Rule is made is made absolute.

Direct service is permitted.