

(2021) 04 GUJ CK 0043

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 6439 Of 2021

Surubha Dhirsinh Zala

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 16-04-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 120B, 406, 409, 420 504, 506(2)

Citation : (2021) 04 GUJ CK 0043

Hon'ble Judges : Umesh A. Trivedi, J

Bench : Single Bench

Advocate : M V Ramani, Vaibhav N Sheth, JK Shah

Final Decision : Allowed

Judgement

Umesh A. Trivedi, 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 FIR No. 11210055200991 of 2020, before Salabatpura

Police Station, Surat for the offences punishable under 406, 409, 420, 120B, 504, 506(2) of the IPC.

[2]. Learned advocate for the applicant, on instructions, states that the applicant is ready and willing to abide by all the conditions including imposition

of condition with regard to power of investigating agency to file an application before the competent Court for his remand. It is also submitted that

upon filing such application by the investigating agency, the right of the applicant-accused to oppose such an application, on merits, may be kept open.

[3]. Learned Additional Public Prosecutor appearing on behalf of the respondent-

State has opposed the grant of anticipatory bail, looking to the nature and gravity of the offence.

[4]. Heard the learned Advocates for the respective parties through Video Conferencing and perused the papers. Learned advocates appearing on behalf of the respective parties do not invite a detailed reasoned order.

[5]. Following aspects are considered.

(A). For the so called offence, the FIR has come to be filed after about almost 2 years.

(B). The transactions shown in the FIR, prima-facie, appears to be commercial transactions.

(C). According to the submission of Mr.Vaibhav Sheth, learned advocate for the applicant, as against the outstanding shown in the FIR against the present applicant, he has produced bank account statement which shows that more than the outstanding shown in the FIR is paid to the complainant by the applicant.

(D). Though, it is submitted that there are other two cases filed against the applicant, as submitted by learned APP, Mr.Sheth, learned advocate for the applicant submitted that in both the cases the applicant has been enlarged on anticipatory bail by the Sessions Court.

(E). Even one co-accused of the present case has been enlarged on anticipatory bail by this Court. Hence, I am inclined to grant anticipatory bail to the present applicant.

[6]. Having, thus, heard the learned counsel for the parties and having perused the record of the case and taking into consideration the nature of

allegations, no overt act is attributed to the applicant, 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 Honâ??ble Apex Court in the case of â??SIDDHARAM

SATLINGAPPA MHETRE VS. STATE OF MAHARASHTRA AND ORS.â??. reported in [2011] 1 SCC 6941, wherein, the Honâ??ble Apex

Court reiterated the law laid down by the Constitutional Bench in the case of â??SHRI GURUBAKSH SINGH SIBBIA & ORS.â??. as reported at

(1980) 2 SCC 665.

[7]. In the result, the present application is ALLOWED by directing that in the

event of the applicant, herein, being arrested in connection with the FIR

No. 11210055200991 of 2020, before Salabatpura Police Station, Surat, the applicant shall be RELEASED on bail on furnishing the personal bond in

the sum of Rs. 15,000/- (Rupees Fifteen Thousand only) with one surety of the 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 3rd May, 2021 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;

[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 anticipatory bail.

[10]. Rule is made absolute. Application is disposed of accordingly.

Registry is directed to communicate this order by FAX or E-MAIL to the concerned Authority, FORTHWITH.