

(2020) 08 GUJ CK 0136

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 4933 Of 2020

Vajubhai Jesabhai Barad

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 11-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Gujarat Prohibition Act, 1949 — Section 65E, 65F, 81, 98(2), 99
Indian Penal Code, 1860 — Section 354, 406, 420, 506(2). 507

Citation : (2020) 08 GUJ CK 0136

Hon'ble Judges : B.N. Karia, J

Bench : Single Bench

Advocate : Nasrin N Shaikh, M.H. Bhatt

Final Decision : Allowed

Judgement

B.N. Karia, J

By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant has prayed to release him on anticipatory

bail in case of his arrest in connection with the FIR registered as C.R No. III- 114 of 2018 before Kodinar Police Station, District: Junagadh for the

offence punishable under Sections 65E, 65F, 81, 98(2) and 99 of the Prohibition Act.

Learned advocate for the applicant submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary.

Besides the applicant is 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.

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 would further submit that upon filing of such application by the Investigating Agency, the right of applicant to oppose such application on merits may be kept open.

Learned Additional Public Prosecutor appearing on behalf of the respondent-State has strongly objected the submissions made by learned advocate

for the applicant and produced a report of the Police Head Constable, Kodinar Police Station addressing to Government Pleader, Gujarat High Court,

Ahmedabad and submitted that against the co-accused persons, charge-sheet was filed on 27.07.2020 and present applicant is presently absconded

and yet not arrested. That, the applicant has criminal antecedents of two different offences, which are registered with Chorwad and Bagasara Police

Station. That, applicant is yet to be arrested by the police. That prima facie involvement of the present applicant is established from the investigating

papers, and therefore, prayer made by present applicant to enlarge him on anticipatory bail cannot be allowed by this Court. Lastly, it was requested

by learned APP for the respondent-State to dismiss present application.

Heard the learned Advocates for the respective parties and perused the papers.

Having considered the submissions made by learned advocate for the applicant as well as learned APP for the respondent-State, it appears from the

contents of the complaint that no specific averments are made against the present applicant in the complaint. At the time of raiding the premises of the

offence, present applicant was not present as well as no liquor was recovered from the conscious possession of the applicant. From the papers,

particularly revenue record produced by the applicant, he is not an owner of the premises, where the raid was conducted by the raiding officer.

From the order passed by this Court in Criminal Misc. Application (For Quashing & Set Aside FIR/Order) No.10016 of 2010, C.R. No.II-10 of 2010

registered with the Bagasara Police Station, Dist-Amreli for the offence punishable under Section 506(2), 507, 406, 420 and 354 of the Indian Penal

Code, FIR was quashed by this Court (Coram:Hon:ble Mr.Justice J.B. Pardiwala) vide order dated 19.08.2015.

It further appears from the record that from the statements of the co-accused,

name of the present applicant was disclosed. The present applicant has also preferred one Special Civil Application No.7963 of 2018 under apprehended action of detention by the authority and in the same petition, police report was submitted by Police Inspector, Kodinar Police Station, Dist-Gir Somnath informing the office of the Government Pleader, which was taken on record. It was stated in the said report that no proposal of the detention of the present applicant under the PASA in respect of C.R. No.III-114 of 2018 registered with Kodinar Police Station for the offence mentioned thereunder. In light of the communication produced on record, such petition was dismissed as not pressed.

Looking to the participation of the present applicant in the offence and allegations made against the present applicant in the complaint, 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 Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors. as reported at [2011] 1 SCC 694,1 wherein the Honâ??ble Apex Court reiterated the law laid down by the Constitutional Bench in the the case of Shri Gurubaksh Singh Sibbia & Ors., as reported at (1980) 2 SCC 665.

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.

III- 114 of 2018 before Kodinar Police Station, District: Junagadh, the applicant shall be released on bail on furnishing a personal bond of Rs.10,000/-

(Rupees 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 18.08.2020 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; 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. Application is disposed of

accordingly.

Registry is directed to send a copy of this order to the concerned Police Station through fax or email forthwith.