

(2024) 02 GUJ CK 0057

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Anticipatory Bail) No. 18490 Of 2023

Valjibhai Mepabhai Metaliya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 14-02-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 107

Citation : (2024) 02 GUJ CK 0057

Hon'ble Judges : J. C. Doshi, J

Bench : Single Bench

Advocate : Virat G Popat, Munjal V Acharya, Asmita Patel

Final Decision : Allowed

Judgement

J. C. Doshi, J

The complainant is represented through learned advocate Mr. Munjal Acharya for the first informant and obtained time since 10.11.2023 for filing the reply. However, till date the reply is not filed nor learned advocate for the first informant is present in the Court.

1. By way of the present petition under Section 438 of the Code of Criminal Procedure, 1973, the petitioners have prayed to release him on anticipatory bail in case of his arrest in connection with the FIR registered as C.R.No.11211009230453 registered with Chotila Police Station.

2. Learned advocate for the petitioners submits that considering the nature of allegations, role attributed to the petitioners, the petitioners may be enlarged on anticipatory bail by imposing suitable conditions.

3. Learned Additional Public Prosecutor appearing on behalf of the respondent-State has opposed grant of anticipatory bail looking to the nature and gravity of the offence.

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

5. Having heard the learned advocate for the parties and perusing the investigation papers, it is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon'ble Apex Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided. I have considered the following aspects.

(1) Even if the FIR is considered to be true and genuine, ingredients of offence u/s 306 of the IPC is not made out.

(2) There is no mens rea and no proximate act, which prompted the deceased to commit suicide.

(3) The ingredients of section 107 of the IPC is not made out considering the FIR on its face.

(4) In the suicide note, it is not disclosed that the petitioners have instigated the deceased to commit suicide.

(5) In the suicide note, the deceased mentioned that he has committed suicide because of the petitioners, but no specific act of the petitioner in the suicide note, which prompted the deceased to commit suicide.

(6) As far as issuance of warrant u/s 70 of Code of Criminal Procedure, 1973 is concerned, it is issued subsequent to filing of this petition.

(7) The Hon'ble Apex Court in case of MARIANO ANTO BRUNO & ANR. versus THE INSPECTOR OF POLICE reported in reported in 2022 LiveLaw (SC) 834, held thus:-

"32. With respect to bipolar disorder with which the deceased was suffering, it refers to a disorder associated with episodes of mood swings ranging from depressive lows to manic highs. Some of the symptoms of bipolar disorder are as follows:

? Feeling sad, hopeless or irritable most of the time

? Lack of energy

? Difficulty in concentrating and remembering things

? Loss of interest in everyday activities

? Feelings of emptiness or worthlessness Indeed, each suicide is a personal tragedy that prematurely takes the life of an individual and has a continuing ripple effect, dramatically affecting the lives of families, friends and communities. However, the court of law while adjudicating is not to be guided by emotions of sentiments but the dictum is required to be based on analysis of facts and evidence on record.”

6. Having heard the learned counsel for the parties and perusing the record of the case and taking into consideration the facts of the case, nature of allegations, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to exercise discretion in favour of the petitioners.

7. This Court while exercising discretion in favour of the petitioners has taken into consideration law laid down by the Apex Court in the case of Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors. [2011] 1 SCC 694, wherein the Hon’ble Apex Court reiterated the law laid down by the Constitutional Bench in the the case of Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab (1980) 2 SCC 665. This Court has also taken into consideration law laid down in the case of Sushila Agarwal v/s. State (NCT of Delhi [(2020) 5 SCC 1].

8. In the result, the present petition is allowed by directing that in the event of applicant herein being arrested pursuant to FIR registered as C.R.No.11211009230453 registered with Chotila Police Station, the petitioners shall be released on bail on furnishing a personal bond of Rs. 10,000/- (Rupees Ten Thousand only) each with one surety of like amount on the following conditions that the petitioners :

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

(b) shall remain present at concerned Police Station on 6.3.2024 and 7.3.2024 between 10.00 a.m. and 4.00 p.m.;

(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 them from disclosing such facts to the court or to any police officer;

(d) shall 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) 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;

(f) shall not leave India without the permission of the concerned trial court and if

having passport shall deposit the same before the concerned trial court within a week;

9. If breach of any of the above conditions is committed by the petitioners, the concerned learned Judge will be free to take appropriate action in the matter. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions in accordance with law. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the petitioners on bail.

Direct service is permitted.