

(2020) 07 GUJ CK 0065

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9688 Of 2020

Vasantbhai Nandlal Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 21-07-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 114, 294(b), 323, 498A, 506(2)

Citation : (2020) 07 GUJ CK 0065

Hon'ble Judges : Bhargav D. Karia, J

Bench : Single Bench

Advocate : PR Abichandani, PS Patel, C.M. Shah

Final Decision : Allowed

Judgement

Bhargav D. Karia, J

1. Heard learned advocate Mr. P. R. Abhichandani with learned advocate Mr. P. S. Patel, for the applicants, learned advocate Mr. Prerak Oza, who

is permitted to appear on behalf of the original complainant on oral request and Ms. C.M. Shah, learned Additional Public Prosecutor for the

respondent â?"State through video conference.

2. Rule returnable forthwith. Ms. C.M. Shah, learned Additional Public Prosecutor waives service of notice of Rule on behalf of the respondent

â?"State.

3. Learned advocate Mr. Prerak Oza seeks permission to file his Vakalatnama. Permission as prayed for is granted. Registry is directed to accept the

Vakalatnama of learned advocate Mr. Prerak Oza.

4. This application is filed seeking anticipatory bail under Section 438 of the Code

of Criminal Procedure, 1973 in respect of the offences punishable

under Sections 498A, 323, 294(b), 506(2) and 114 of the Indian Penal Code and under Sections 3 and 7 of the Dowry Prohibition Act, for which F.I.R.

came to be registered being Iâ?"C.R. No. 11191035200335 of 2020 with Naroda Police Station, Ahmedabad City dated 21st March 2020.

5. Learned advocate appearing on behalf of the applicants would submit that considering the nature of offence, the applicants may be enlarged on

anticipatory bail by imposing suitable conditions. Learned Advocate for the applicants on instructions states that the applicants are ready and willing to

abide by all the conditions, including the condition with regard to the powers of Investigating Agency to seek remand of the applicants; subject to the

applicants' right to oppose it.

4. Learned advocate Mr.Abhichandani submitted that the applicants are aged about more than 50 years and considering the averments made in the

F.I.R., it appears that the vague allegations are made against the applicants. He further submitted that the applicants are residing separately from the

complainant and the husband against whom a complaint is filed.

5. Learned advocate Mr. Prerak Oza for the original complainant submitted that husband Mr.Jaiminkumar Vasantbhai Patel, who is holding the

Passport of Canada has already left the country and it is likely that the applicant nos.1 and 2, who are having Passport of Australia are likely to flee

away to Australia. He further submitted that the Passport of the complainant and her daughter which contain the Visa of Canada is in the custody of

the applicant nos.1 and 2 and therefore, the applicants should not be granted preâ?arrest bail.

6. On the other hand, the learned Additional Public Prosecutor appearing for the respondentâ?State has opposed this application.

7. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case,

nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to grant

anticipatory bail to the applicants.

8. This Court has considered following aspects,

(a) The applicants are aged about more than 50 years;

(b) It is submitted that there was a settlement between the parties before 1½ years and thereafter the complainant and husband were residing separately and in such circumstances the applicants should be granted pre-arrest bail.

9. 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., reported at [2011] 1 SCC 694 ,wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution

Bench in the case of Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab, reported at (1980) 2 SCC 565.

10. In the result, the present application is allowed. The applicants are ordered to be released on bail in the event of their arrest in connection with

F.I.R. being I.C.R. No. 11191035200335 of 2020 registered with Naroda Police Station, Ahmedabad City on their executing a personal bond of

Rs.10,000/ (Rupees Ten Thousand Only) each with one surety of like amount on the following conditions that they:

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

(b) shall remain present at concerned Police Station on 27.07.2020 between 11.00 a.m. and 2.00 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 him

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 their residence till the final disposal of the case;

(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; 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;

11. Despite this order, it would be open for the Investigating Agency to apply to

the competent Magistrate, for police remand of the applicants. The applicants 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 applicants/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 applicants, 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.

12. At the trial, the concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.

13. Rule is made absolute to the aforesaid extent. Registry to communicate this order to the concerned Court/Authority as well as learned advocate for the applicants through Fax or E-mail. Direct service is permitted.