

(2022) 03 GUJ CK 0023

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 10648 Of 2021

Virambhai Ishwarbhai Desai (Rabari)

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-03-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 107, 114, 306, 498A
Dowry Prohibition Act, 1961 — Section 3, 7

Citation : (2022) 03 GUJ CK 0023

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Jayprakash Umot, Nimesh M Patel, Krina Calla, Vikas V Nair

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. Apprehending arrest, the applicants by way of present application under Section 438 of the Code of Criminal Procedure, 1973, have prayed for anticipatory bail in connection with the FIR being C.R.No. 11217026210431 of 2021 registered with Patan Taluka Police Station, Dist. Patan, for the offences under Sections 306, 498-A, and 114 of the IPC and Sections 3 and 7 of the Dowry Prohibition Act.

2. Mr. I.H.Syed, learned Senior Counsel assisted by Mr. Jayprakash Umot, learned advocate for the applicants submitted that the facts of the case do not constitute the offence punishable under Section 306 of IPC as there is no specific allegation that, the applicants have instigated or abetted the deceased to commit suicide. So, he submitted that prima facie, no offence under Section 306 of IPC is made out. He further submitted that considering the age of the applicants, discretion may be exercised in their favour by granting pre-arrest bail by imposing appropriate terms and conditions.

3. Mr. Nimesh M. Patel, learned counsel appearing for the original informant reiterating the contents of the affidavit in reply, contended that the applicants have committed an offence of abettment as contemplated under Section 107 of the IPC and therefore, prima facie, the involvement of the applicants for the alleged offence of Sections 306 of IPC is made out.

4. Mr. Manan Mehta, learned Additional Public Prosecutor appearing on behalf of the respondent – State adopting the arguments advanced by learned counsel for the informant contended that, no case is made out for the exercise of power to grant anticipatory bail as the offence alleged is serious and grave in nature affecting the society at large. It is therefore submitted that, no case is made out for granting anticipatory bail.

5. It is settled law that, in order to bring a case within provisions of Section 306 of the IPC, there must be a case of suicide and in commission of the offence, person who is said to have abetted the alleged suicide, must have played an active role by an act of instigating or by doing a certain act to facilitate commission of suicide.

6. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, the applicants herein are brother-in-law of the deceased. It is pertinent to note that the marriage span is of 21 years. Mr. Syed, learned Senior Counsel appearing for the applicants drew attention of this Court to the statement of the witnesses, more particularly son of the deceased to submit that the deceased was suffering from depression as she was under impression that she having cancer diseases. In this background fact, this Court is of prima facie view that the allegations alleged against the applicants cannot be said that they have abetted in the alleged offence of suicide.

7. Considering the facts and circumstances of the case and the role attributed to the present applicants, factors and parameters, necessary to be considered for adjudication of anticipatory bail, without commending on merits of the case, case is made out for exercise of power to grant anticipatory bail and therefore, this Court finds that it is a fit case to grant pre-arrest bail. 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 the FIR being C.R.No. 11217026210431 of 2021 registered with Patan Taluka Police Station, Dist. Patan, 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:

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

(b) shall remain present at concerned Police Station on 16.03.2022 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 till further orders;

(f) 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

(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 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 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.

9. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order. Rule is made absolute to the aforesaid extent. Direct service is permitted.