

(2022) 08 GUJ CK 0085
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 14876 Of 2022

Yasminbanu W/O Hamid Shaikh

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 22-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 306

Citation : (2022) 08 GUJ CK 0085

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Md. Mohsin M Shaikh, Mahendra U Vora, LB Dabhi

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr.Mohsin M. Shaikh appearing on behalf of the applicant, learned Additional Public Prosecutor Mr.Dabhi on behalf of the respondent-State, and learned Advocate Mr.Mahendra Vora for the First Informant.

2. Issue Rule returnable forthwith. Learned APP for the State and learned Advocate Mr.Vora for the First Informant waive service of notice of Rule.

3. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant – original accused prays for being released on anticipatory bail in connection with FIR No.11191028221011 of 2022 registered with Vejalpur Police Station, Ahmedabad City on 19.7.2022 for offences punishable under Section 306 of IPC.

4. Learned Advocate Mr.Shaikh for the applicant would submit that the applicant has not committed any offences as alleged in the FIR and she has been falsely implicated. Learned Advocate Mr.Shaikh would submit that no specific role has

been attributed to the present applicant in the FIR. Learned Advocate would further submit that the nature of allegations are such for which custodial interrogation of the applicant at this stage is not necessary. Besides, the applicant is a lady and is available during the course of investigation and will not flee from justice. In view of the above, the applicant may be granted anticipatory bail. 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 would further submit that upon filing of such application by the Investigating Agency, the right of applicant-accused to oppose such application on merits may be kept open.

5. This application has been vehemently opposed by learned Additional Public Prosecutor Mr.Dabhi appearing on behalf of the respondent-State, as well as learned Advocate Mr.Vora for the First Informant who would submit that looking to the nature and gravity of the offence the applicant may not be released on anticipatory bail by this Court.

6. Having heard the learned Advocates for the parties and having perused the investigation papers, while this Court does not intend to discuss the evidence in detail, following aspects are taken into consideration by this Court:

1. That while there is allegation, more particularly even as per the suicide note by the deceased that the present applicant had lent money to him on interest, and she was pressurizing the deceased for repayment, it also appears that the parties i.e. the deceased and the present applicant had a business relationship, more particularly a deed of partnership dated 25.7.2018 being placed on record;

2. It also appears as per the investigation papers that the applicant and the deceased had entered into a settlement deed dated 8.10.2021, wherein the deceased had accepted that he had borrowed Rs.3,00,000/- from the present applicant and whereas he had also accepted that he would return back the same to the present applicant within a period of one year;

3. What would be pertinent to mention here is that such agreement clearly mentions that the amount was given as loan without any interest;

4. It also appears that the present applicant is a lady with two minor children;

5. That the applicant does not have any antecedents of being involved in any such criminal activity herein before.

7. Considering the fact that there were business transactions and whereas the applicant and the deceased had entered into an agreement, whereby the deceased was to return Rs.3,00,000/-, which had been lent by the applicant without any interest to the applicant, at this stage, in the considered opinion of this Court, interference is required.

8. Having regard to the circumstances noted above, and considering the law laid

down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors. reported in (2011)1 SCC 694, this Court is inclined to consider this application.

9. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR No.11191028221011 of 2022 registered with Vejalpur Police Station, Ahmedabad City on 19.7.2022, the applicant shall be released on anticipatory bail on furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety of like amount, on the following conditions that the applicant:

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

(b) shall remain present at the concerned Police Station on 25.08.2022 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 her residence till the final disposal of the case or till further orders;

(f) shall not leave India without the permission of the Court and, if having passports shall surrender the same before the Trial Court within a week;

10. Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicant to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. 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.

11. 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 to the aforesaid extent. Direct service is permitted.