IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 18552 of 2023

==========

AJAYRAJ @ VIJENDRASINH KIRODILAL MEENA

Versus

STATE OF GUJARAT

==========

Appearance:
MR HB CHAMPAVAT(6149) for the Applicant(s) No. 1
MS SHRUTI PATHAK, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

==========

CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Date : 03/11/2023
ORAL ORDER

[1.0] RULE. Learned APP waives service of notice of Rule on behalf of the respondent – State.

[2.0] By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant accused has prayed to release him on anticipatory bail in the event of his arrest in connection with the FIR being **C.R. No.I-10 of 2016 dated 11.01.2016** registered with **Sector-7 Police Station, District Gandhinagar** for the offences punishable under Sections 419, 420, 465, 467, 468, 471 and 114 of the Indian Penal Code, 1860.

[3.0] Learned advocate for the applicant submitted that present applicant is falsely enroped in the offence and he has nothing to do with the offence. Further, the applicant has not played any active role insofar as offence of forgery in the FIR. The alleged offence took place in the year 2014 whereas the FIR is filed in the

year 2016 based on private FSL report. Further, the applicant is shown as absconder in the charge-sheet but the police has never visited the place of the present applicant. Further, the applicant is ready and willing to cooperate and join the investigation. Further, as now nothing is required to be recovered or discovered from the present applicant, he requested to allow the present application as there is no requirement of custodial interrogation.

[4.0] *Per contra,* learned APP appearing for the State has vehemently opposed the present application and stated that though the charge-sheet is filed, present applicant is shown as absconding in column No.2 of the charge-sheet as the applicant is absconding since 2016. Further, the present applicant has made deal with the co-accused and by creating forged documents had appeared in competitive examination for the post of Clerk on behalf of co-accused Udayraj Brijlal Meena. Further, the co-accused viz. Vikas and Bhupendra, who are shown in column No.2 of the charge-sheet, are yet to be arrested as they are also absconding. Thus, *prima facie,* involvement of the present applicant is there and therefore, custodial interrogation is required. Hence, has requested not to exercise the discretion in favor of the applicant and has requested to dismiss the present application.

[5.0] Heard learned advocates appearing for the respective parties and given thoughtful consideration to the arguments canvassed by both sides. 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.

[6.0] From the investigation papers, it appears that offence is committed in the year 2014 and the FIR and charge-sheet is filed in the year 2016 still however, the applicant is absconding till date i.e. since last more than 7 years. In view of the law laid down by the Hon'ble Apex Court in case of **State of Haryana vs. Dharamraj** reported in **2023 INSC 784; Lavesh vs. (NCT of Delhi)** reported in **(2012) 8 SCC 730; Abhishek vs. State of Maharastra** reported in **2022 (8) SCC 282** and **Prem Shankar Prasad vs. State of Bihar** reported in **2021 SCC OnLine SC 955,** it is observed that as the accused remained absconder for 7 years, this is not a fit case to exercise the jurisdiction in favour of the applicant.

[6.1] Further, the applicant is facing serious charge of offence of forgery pursuant to which applicant created forged documents and appeared in competitive examination for the post of Clerk by adopting illegal means on behalf of some other person. In so far the competitive examination is concerned, misconduct, misbehaviour, malpractices and cheating is required to be dealt with strictly. The purity of the examination is of paramount consideration and in the competitive examination where many incumbent candidates burn their midnight oil to secure the government job and are eagerly waiting for the government jobs, they are ultimately deprived due to such unscrupulous elements and their dishonest activity and malpractice. At this stage, reference is required to be made to the decision of the Hon'ble Apex Court in the case of **Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology Chandigarh and Ors. vs Vaibhav Singh Chauhan** reported in **(2009) 1 SC 59**, wherein paragraph 12 reads as under:

> *"12. We are of the firm opinion that in academic matter there should be strict discipline and malpractices should be severely punished. If our country is to progress we must maintain high educational standards, and this is only possible if malpractices in examinations in educational institutions are curbed with an iron hand."*

[7.0] Considering the aforesaid all facts as also keeping in mind the law laid down by the Hon'ble Supreme Court in the case of **Siddharam Satlingappa Mhetre V/s State of Maharashtra and Others reported in (2011) 1 SCC 694**, and going through the material very carefully available against the accused it appears

that herein, no complaint has been made with a view to humiliate or tarnish the image of the present applicant.

[7.1] Further, considering the allegation made in the FIR, for the qualitative investigation, presence of applicant is required and custodial interrogation is necessary. Thus, *prima facie* it appears that accused has played active role and qualitative investigation is necessary in the matter.

[7.2] When serious offences are disclosed and involvement of an accused is *prima facie* established then, the Court would be loath to lean in favour of grant of pre-arrest bail in absence of any other overriding considerations. This Court is conscious of the safeguards provided under Section 438 and concept of the personal liberty. But herein, this court is of considered view that, the present offence is committed very smartly and in very planned and methodical manner which is not just an offence against any individual rather the largest societal interest and in such circumstances, the delicate balance is required to be maintained between two rights one against the personal liberty and second is societal interest. Arrest is part of the process of investigation and intended to secure several purposes in which the accused may provide information, during the discovery of material facts and relevant information. In such circumstances, when investigation is at preliminary stage if, anticipatory bail is granted, it may hamper the investigation and therefore, to find out the involvement of other persons, custodial interrogation is also necessary.

[7.3] This Court has also kept in mind the law laid down by the **Hon'ble Supreme Court** in the case of **Pratibha Manchanda vs The State Of Haryana** reported in **AIR 2023 SC 3307,** wherein para 19 reads as under :

> *"19. The relief of Anticipatory Bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome."*

Even in the case of **Jai Prakash Singh V/s State of Bihar and another**, reported in **(2012) 4 SCC 379**, **Hon'ble Supreme Court** was pleased to hold:

> *"Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty."*

[7.4] The object of anticipatory bail is that person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. In present case, no any such sort of allegation or bias is found out. It is needless to say that order under Section 438 of CrPC is not a passport to the commission of

offence nor a shield against any serious accusation, which adversely affects the society.

[8.0] In the above facts and circumstances and considering the observations on the legal aspect of the matter, as applicant is actively involved in the offence, I have absolutely no doubt that if applicant is equipped with such an order of anticipatory bail before he is interrogated by the Police, it would greatly harm the investigation and would impede the prospects of unearthing the truth.

[9.0] Having considered nature and seriousness of the charge, *prima facie* involvement of accused and possibility of tempering with evidences, it does not appear to be just and proper to exercise the discretion in favour of the applicant and accordingly, the application for anticipatory bail is dismissed. Rule is hereby discharged.

(HASMUKH D. SUTHAR, J.)

Ajay