

2023 SCC OnLine Guj 2515

In the High Court of Gujarat at Ahmedabad
(BEFORE J.C. DOSHI, J.)

Nipulbhai Gangdasbhai Santoki

Versus

State of Gujarat

R/Criminal Misc. Application No. 12391 of 2023

Decided on August 9, 2023

Advocates who appeared in this case:

Mr. Kschandrani for Mr. Nilay Athaker(7275) for the Applicants.

Mr. Ronak Raval App for the Respondent(s) No. 1

The Order of the Court was delivered by

J.C. DOSHI, J.:— This application is filed under Section 438 of the Code of Criminal Procedure (for short "Code") seeking pre-arrest bail in connection with the offence registered with Kalavad Police Station, Jamnagar being CR No. 11202030230218 of 2023 for the offence punishable under section 306 and 114 of the Penal Code, 1860.

2. The short facts discerned from the record are that one Mr. Rameshbhai son of Rajabhai Meshabhai lodged the captioned FIR against Sureshbhai Keshavjibhai Santoki and Natinbhai Keshavjibhai Santoki and other partners of Amul Industries Pvt. Ltd., alleging *inter alia* that deceased-Vikrambhai was working with the Amul Industries Pvt. Ltd., since last more than 15 years. Petitioners-accused were irregular in paying the salary to the workers; including the deceased for more than six months. Thus, some agitation had been preferred which resulted into the payment of salaries; but again irregularity in paying salary took place. Deceased-Vikram being employee was facing some financial crunch and when he demanded the salary, he was transferred to some other place viz., Panipat, Tamilnadu. It is further alleged that since the loan was taken by the deceased on credit card which had become outstanding; but as the deceased was not paid the salary since last six months, he was facing financial crunch and could not pay the loan and because of harassment at the hands of the partners of Amul Industries, deceased set himself ablaze on 26/05/2023 and thus the FIR as above alleging abetment of commit suicide was lodged against the accused persons.

3. Learned Advocate Mr. Chandrani for Mr. Thakkar, learned Advocate for the applicants submits that if the allegations leveled in the FIR are taken at face value and the same is considered true and correct, no

offence satisfying the basic ingredients of Section 306 of the IPC is made out. He has further submitted that looking to the allegations leveled in the FIR, the prosecution has failed to make out any case of instigation or goad being made on behalf of the owners of Amul Industry or any direct involvement which has abetted the deceased to commit suicide. He has further submitted that name of the present petitioners are not stated in the FIR; nor in the dying declaration. He would further submit that FIR is silent about the role alleged to have been played by the petitioners in commission of the offence. Taking this Court through the documents placed on record, he would submit that on 22/02/2023, the Director of Amul Industries informed the Commissioner of Police, Rajkot City that some of the employees of the industry are passing threat that they will commit suicide and therefore looking to this aspect, it appears that it is the complainant who instigated the deceased to commit the suicide by setting himself ablaze. He has further submitted that non-payment of salary would not be the reason which can be countenanced for committing the suicide or cannot be considered an act of abetment to commit suicide which is an essential ingredient of Section 306 of the IPC.

4. Learned Advocate Mr. Chandrani in support of his submissions placed reliance upon a decision in the case of *Iqbal Hasanali Syed v. State of Gujarat* [2022-JX-(Guj)-0-1177], more particularly, paragraph 35 and 36 to submit that the law in regards to the scope of grant or refusal of the anticipatory bail explained by the Hon'ble Apex Court in the case of *Siddharam Satilingappa Mhetre v. State of Maharashtra*, [(2011) 1 SCC 694] has been elaborately discussed by this Court in the said judgment. He would further submit that though there is no inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail, considering the gravity of accusation and more particularly the role played by the accused which in the present case is none, the petitioner may be granted pre-arrest bail.

5. He would further submit that the petitioners are well founded and they have deep roots in the society and thus there are no chances of fleeing from justice. Learned Advocate has further submitted that if the arrest of the accused is actuated, it will set a stigma in the society as far as the dignity of the present petitioners are concerned.

6. He would further submit that in absence of the basic elements of the offence punishable under Section 306 read with Section 107 of the IPC, the para-meteres as set out in the case of *Siddharam Satilingappa Mhetre* (supra) is applicable to the present case. He would submit that the petitioners are ready and willing to co-operate with the investigation and from amongst the petitioners, one is aged about 76 years and also suffering from the various ailment and therefore, if the arrest is laid, it would be humiliating situation; both physically and

mentally for the petitioners and therefore, they may be enlarged on pre-arrest bail.

7. Learned Advocate for the petitioners has also pressed into service the Constitution Bench judgment in the case of *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1 to submit that the finding of the trial Court negating the anticipatory bail to the petitioner that no case is made out is in teeth of the finding of the Constitutional Bench judgment. He would further submit that there is no "inexorable rule" that anticipatory bail cannot be granted unless the applicant is the target of mala fides. He would further submit that the present is a fit case where denial of the anticipatory bail would amount to deprivation of the personal liberty of the person.

8. Supporting his submissions, learned Advocate for the petitioner would submit that in an identical case where it was alleged that deceased committed suicide on non-payment of the money, this Court in the case of *Nileshbhai Arvindbhai Gandhi Director, Cube Construction Engineering Limited v. State of Gujarat* [(2020) 3 GLR 2196] has quashed the FIR under Section 482 of the Code. He would further submit that this is also a case where the allegations are levelled that the deceased was not paid the salary which has prompted him to commit suicide and the alleged offence is registered; but since no elements of abetment to commit suicide is discerned from the FIR, present petitioner should not be relegated for the arrest, it adversely hamper the personal liberty.

9. Some more judgments are relied upon by learned Advocate Mr. Chandrani in support of his case, they are following.

1. *Madan Mohan Singh v. State of Gujarat* [(2010) 3 SCC (Cri) 1048].
2. *State of Kerala v. S. Unnikrishnan Nair* [(2015) 9 SCC 639].
3. *Ramesh Babubhai Patel v. State of Gujarat* (rendered in Criminal Misc. Application No. 22198 of 2018 with Criminal Misc. Application No. 14677 of 2018).
4. *Bhagavanbhai Abhabhai Rabari v. State of Gujarat* (rendered in Criminal Misc. Application No. 19445 of 2021).
5. *Arnab Manoranjan Goswami v. State of Maharashtra*, (2021) 2 SCC 427 (paragraph 48 to 70).
6. *Teesta Atul Setalvad v. State of Gujarat* (rendered in Cri. App. No. 2022 of 2023 [@ SLP (CRL) No. 8503 of 2023]).
7. *State Bank of India v. Rajesh Agarwal* [(2023) 6 SCC 1].

10. *Per contra*, learned APP Mr. Ronak Raval having taken this Court through the statement of the witnesses recorded during the investigation, as well as, the statement of the deceased recorded in the form of dying declaration would submit that in the present case though

name of the accused are not stated in the FIR, but they are mentioned as partners/Directors in the Amul Industry. He would further submit that it is not the case of the petitioners that they are not the partners/Directors of the Amul Industry. He would further submit that, by way of FIR, the complainant has put the criminal proceedings into machinery, it is not expected that the FIR should be encyclopaedia and contain each and every facts. However, considering the progress of the investigation so far it would indicate that prima facie case is made out against the petitioners who are the partners/Directors of Amul Industry. He would further submit that the facts emerging from the record would indicate that employee of Amul Industry including the deceased were not paid salary for substantially long time as the deceased was facing financial crunch and have repeatedly asked for the payment of salary; but in vain and that has promoted the deceased to commit suicide and thus prima facie ingredients of Section 306 of the IPC is made out therefore this Court should not exercise the discretion in favour of the petitioners for granting pre-arrest bail.

11. Heard learned Advocates appearing for the respective parties at length.

12. At the outset, this Court would like to refer to the conclusion made in the case of *Sushila. Aggarwal* (Supra) wherein the Constitution Bench of the Apex Court after referring various pronouncements on the subject matter has held in paragraph 91 as under:

“91. In view of the concurring judgments of Justice M.R. Shah and of Justice S. Ravindra Bhat with Justice Arun Mishra, Justice Indira Banerjee and Justice Vineet Saran agreeing with them, the following answers to the reference are set out:

91.1 Regarding Question No. 1, this court holds that the protection granted to a person under Section 438 Cr. P.C. should not invariably be limited to a fixed period; it should inure in favour of the accused without any restriction on time. Normal conditions under Section 437 (3) read with Section 438 (2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event) etc.

91.2 As regards the second question referred to this court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so.

92. This court, in the light of the above discussion in the two

judgments, and in the light of the answers to the reference, hereby clarifies that the following need to be kept in mind by courts, dealing with applications under Section 438, Cr. P.C.:

92.1 Consistent with the judgment in Shri Gurbaksh Singh Sibbia v. State of Punjab, when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his (1980) 2 SCC 565 side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

92.2 It may be advisable for the court, which is approached with an application under Section 438, depending on the seriousness of the threat (of arrest) to issue notice to the public prosecutor and obtain facts, even while granting limited interim anticipatory bail.

92.3 Nothing in Section 438 Cr. P.C., compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified - and ought to impose conditions spelt out in Section 437 (3), Cr. P.C. [by virtue of Section 438 (2)]. The need to impose other restrictive conditions, would have to be judged on a case by case basis, and depending upon the materials produced by the state or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

92.4 Courts ought to be generally guided by considerations

such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

92.5 Anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

92.6 An order of anticipatory bail should not be “blanket” in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.

92.7 An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.

92.8 The observations in Sibbia regarding “limited custody” or “deemed custody” to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sibbia (supra) had observed that

“19....if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v. Deoman Upadhyaya.”

92.9 It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439 (2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.

92.10 The court referred to in para (9) above is the court which

grants anticipatory bail, in the first instance, according to prevailing authorities.

92.11 The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the state or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. (See Prakash Kadam v. Ramprasad Vishwanath Gupta; Jai Prakash Singh (supra) State through C.B.I, v. Amarmani Tripathi). This does not amount to "cancellation" in terms of Section 439 (2), Cr. P.C.

92.12 The observations in Siddharam Satlingappa Mhetre v. State of Maharashtra (and other similar judgments) that no restrictive conditions at all can be imposed, while granting anticipatory bail are hereby overruled. Likewise, the decision in Salauddin Abdulsamad Shaikh v. State of Maharashtra and subsequent decisions (including K.L. Verma v. State; Sunita Devi v. State of Bihar; Adri Dharan Das v. State of West Bengal; Nirmal Jeet Kaur v. State of M.P.; HDFC Bank Limited v. J.J. Mannan; Satpal Singh v. (2011) 6 SCC 189 (2005) 8 SCC 21 (2011) 1 SCC 694 ((1996) 1 SCC 667) (1998) 9 SCC 348 (2005) 1 SCC 608 (2005) 4 SCC 303 (2004) 7 SCC 558 (2010) 1 SCC 679 the State of Punjab and Naresh Kumar Yadav v. Ravindra Kumar) which lay down such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled.

93. The reference is hereby answered in the above terms."

13. In view of above guidelines, more particularly, 92.4, it is indicated that *"the Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court."*

14. In *Pratibha Manchanda v. State of Haryana* [2023 SC 3307] the Hon'ble Apex Court referred to *Siddharam Satilingappa Mhetre* (Supra) as well as the Constitution Bench judgment of *Sushila Aggarwal* (supra) and held in paragraph 19 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."

15. In *X v. Arun Kumar C.K.*, 2022 Live Law (SC) 870, the Apex observed that non-requiring custodial interrogation is not the ground to grant anticipatory bail, but if prima facie case against the accused is made out it should not be overlooked or ignored. The relevant observations reads thus:

"...In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail."

16. Now, coming back to the facts of the case on hand, it transpire that deceased after setting himself ablaze called to some of the witnesses and informed that he has committed suicide because of the harassment on the part of the owners/Directors of Amul Industry. Apart from the statements on record, the dying declaration of the deceased was also recorded which indicates that he has not been paid salary since last six months and by which the Amul Industry or its partners or Directors had put him into financial crunch. He has levelled allegations against Mr. Nitinbhai and Mr. Sureshbhai as well as other partners/Directors of the Amul Industry. For committing the suicide allegations of financial crunch are made which arose on account of non-payment of the salary. Whether the contents of Section 107 i.e. abetment/instigation or goad are made out or not can be ascertained during investigation; but at this juncture what comes to record is

'tension', 'distress' and the 'trauma' which felt by the deceased as he has not been paid salary despite he worked with the Amul Industry and because of such he could not met out to his outstanding due. Non-payment of salary has promoted him to take away his life by committing suicide. The alleged offence is under Section 306 of the IPC. *Prima, facie* seriousness of the offence is coming out from the FIR, so also the gravity.

17. In view of the above, this Court is of the opinion that as the prima facise case is made out against the petitioners, and considering the severity and punishment, no case is made out to grant pre-arrest bail.

18. Insofar as the judgment which learned Advocate for the applicant has referred to and relied upon, they are on the facts of each case. The decision in the case of *Siddharam Satilingappa Mhetre* (Supra) has been thoroughly discussed in the Constitution Bench judgment *Sushila Aggarwal* (Supra), conclusion of which is recorded herein above.

19. Now, insofar as case of *Iqbal Hasanali Syed* (supra) is concerned, it is on the facts of that case. The decision in the case of *Madan Mohan Singh* (supra) and *Nileshbhai Arvindbhai Gandhi Director* (supra) are in regards to exercise of powers under Section 482 of the Code for quashing of the complaint. The decision in case of *Rameshbhai Babubhai Patel* (supra) is also in relation to quashing of FIR whereby this Court relied upon the decision in case of *Nileshbhai Arvindbhai Gandhi Director* (supra) and quashed the complaint. The decision in case of *Bhagvanbhai Abhabhai Rabari* (supra) is though in regards to grant of anticipatory bail under Section 438 of Code; but on its own facts.

20. Reliance was also placed upon the judgment of Hon'ble Apex Court in the case of *Arnab Manoranjan Goswami* (supra) and in paragraph 70, it is observed thus:

"70. More than four decades ago, in a celebrated judgment in State of Rajasthan, Jaipur v. Balchand, Justice Krishna Iyer pithily reminded us that the basic rule of our criminal justice system is bail, not jail '40. The High Courts and Courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the =subordinate judiciary'. It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases.

This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this Court languish as undertrials. Courts must be alive to the situation as it prevails on the ground - in the jails and police stations where human dignity has no protector. As judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the solemn expression of the humaneness of the justice system. Tasked as we are with the primary responsibility of preserving the liberty of all citizens, we cannot countenance an approach that has the consequence of applying this basic rule in an inverted form. We have given expression to our anguish in a case where a citizen has approached this court. We have done so in order to reiterate principles which must govern countless other faces whose voices should not go unheard."

21. As noted in the case of *Sushila Aggarwal* (Supra), the Constitution Bench laid down that the Court ought to have been generally guided by the consideration such as nature and gravity of the offence; the role attributed to the applicant and the facts of the case under the discretionary jurisdiction. Facts of the present case alongwith the nature and gravity of the offence does not permit this Court to exercise the discretion in favour of the petitioners. Thus, following order is passed.

ORDER

22. This pre-arrest bail application is rejected.

23. Needless to say that observations made herein above are confined to decision of the present bail application.

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