

2023 SCC OnLine Guj 2730

In the High Court of Gujarat at Ahmedabad
(BEFORE HASMUKH D. SUTHAR, J.)

Alambhai Nurabhai Malek

Versus

State of Gujarat

R/Criminal Misc. Application NO. 7145 of 2023

Decided on August 28, 2023

Advocates who appeared in this case:

Mr. Nitin T. Gandhi(5620) for the Applicant(s) No. 1

Rohankumar M. Amin(8851) for the Applicant(s) No. 1

Mr. Bomi H. Sethna(5864) for the Respondent(s) No. 1

Mr. L. B. Dabhi APP for the Respondent(s) No. 1

The Order of the Court was delivered by

HASMUKH D. SUTHAR, J.:— By way of the present application under Section 438 of the Criminal Procedure Code, 1973, the applicant - accused have prayed for anticipatory bail in connection with the FIR bearing No. 11191036230041 of 2023 registered with Navrangpura Police Station, Ahmedabad for the offences punishable under Sections 406, 420, 465, 467, 468, 471, 506(2) and 114 of the Indian Penal.

2. Heard learned Counsel Mr. Anandjiwala assisted by learned advocate Mr. R. M. Amin for the applicant submits that present applicant has nothing to do with the offence is of Civil nature, even present applicant has preferred the Civil suit against one Ajaybhai Shridhar. Even one complaint filed before the Commissioner of Police, Ahmedabad City on 15.01.2023. Present applicant has also joined the investigation and statement was also recorded, subsequently present complaint is registered. Considering the nature of allegations are such for which custodial interrogation at this stage is not necessary. Present applicant is not a party to the alleged sale of contract. He further submits that the applicant will keep themselves available during the course of investigation, trial also and will not flee from justice.

3. 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. He 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. Learned advocate, therefore, submitted that considering the above facts, the applicant may be granted anticipatory bail.

4. Learned Additional Public Prosecutor appearing on behalf of the respondent - State has opposed grant of anticipatory bail looking to the nature and gravity of the offence. Learned advocate Mr. Bomi H. Sethna has opposed the application and stated that present applicant has entered into the transaction with many people and he has duped the money of the applicant. The applicant is the partner of one Ajaybhai and subsequently with intention of cheating he has executed sale of agreement to the persons and he has duped the money. There is prima-facie involvement of accused reveals and intention of cheating is revealed itself from the conduct of the accused persons. In connivance of both accused offence is committed hence application came to be filed before the Commissioner of Police after investigation complaint came out, hence custodial interrogation is required and he requested to dismiss the present application.

5. 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 applicant.

6. This Court has considered following aspects,

- (i) there is no nexus between the present complainant, present accused and the alleged transaction;
- (ii) present complainant is nowhere party to the any conveyance;
- (iii) alleged dispute is prima-facie appears of Civil nature;
- (iv) considering the allegation levelled in the FIR no any allegation borne out qua cheating, even one Civil suit is filed by accused against one Ajaybhai Shridhar qua subject matter;
- (v) as alleged offence is based on documentary evidence and earlier applicant has joined the investigation, considering these all aspects and at the instructions of applicant learned senior Counsel stated that applicant is ready to join and co-operate in the investigation. In view of above and considering the law laid down in the case of *Sushila Aggarwal v. State (NCT of Delhi)*, 2020 SCC OnLine SC 98, present application is required to be allowed.

7. In the facts and circumstances of the present case, since the custodial interrogation of the applicant is not required, I am inclined to consider the case of the applicant.

8. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of *Siddharam Satlingappa Mhetre v. State of Maharashtra*, 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 v. State of Punjab*, reported at (1980) 2 SCC 565.

9. In the result, the present application is allowed. The applicant is ordered to be released on bail in the event of his arrest in connection with FIR bearing No. 11191036230041 of 2023 registered with Navrangpura Police Station, Ahmedabad on executing a personal bond of Rs. 10,000/- (Rupees Ten Thousand Only) 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 12.09.2023 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 residence till the final disposal of the case till further orders;
- (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;

10. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicant. 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 concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.

12. Rule is made absolute to the aforesaid extent.

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