IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 9128 of 2020

==========

ARBAZKHAN SANAVARKHAN PATHAN

Versus

STATE OF GUJARAT

==========

Appearance:
JAYDEEP H SINDHI(9585) for the Applicant(s) No. 1
MS CM SHAH, ADDL. PUBLIC PROSECUTOR(2) for the Respondent(s) No. 1

==========

CORAM: **HONOURABLE MS. JUSTICE GITA GOPI**

Date : 02/07/2020

ORAL ORDER

1. Rule. Ms. C.M. Shah, learned Additional Public Prosecutor, waives service of notice of rule on behalf of respondent-State.

2. This application has been preferred under section 438 of the Code of Criminal Procedure seeking anticipatory bail in connection with the first information report being C.R. No.III-590 of 2019 registered with Chhotaudepur Police Station for the offences punishable under sections 65(E), 98(2), 81, 83 and 116-B of the Gujarat Prohibition Act.

3. Learned advocate for the applicant submitted that the applicant herein has not been named in the impugned complaint. It was submitted that the applicant is in the business of fabrication works and has no criminal antecedents. However, since his mobile number is reflected in the impugned complaint,

he apprehends that he would be arrested. It was further submitted that had there been any criminal conspiracy, then the co-accused would have certainly known the name of the applicant. It was, therefore, prayed that discretion may be granted in favour of the applicant.

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. It was, therefore, prayed that no discretion may be exercised in favour of the applicants.

5. Heard the learned advocates for the parties and perused the material on record. In the impugned complaint, the applicant herein has not been named as an accused. His mobile number is reflected as that of original accused no.3 – Bablubhai, whose father's name is not known. The applicant also does not appear to have any known criminal antecedents. Taking into consideration the facts of the case, nature of allegations and the gravity of offence, this Court is inclined to grant anticipatory bail to the applicants.

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

7. 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 first information report being **C.R. No. III-590 of 2019 registered with Chhotaudepur Police Station** 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 09.07.2020 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 his 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;

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 concerned 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. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.

(GITA GOPI,J)

Vahid