IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR SUCCESSIVE ANTICIPATORY BAIL) NO. 21400 of 2023

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NIPABEN VIKASBHAI SORATHIYA

Versus

STATE OF GUJARAT

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Appearance:
MR VIRAT G POPAT(3710) for the Applicant(s) No. 1,2
BHASKAR SHARMA(9209) for the Respondent(s) No. 2
MR. HARDIK MEHTA, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.Y. KOGJE**

Date : 19/01/2024

ORAL ORDER

1. Affidavit in reply on behalf of the respondent No.2-Bank is taken on record.

2. This application is filed by the applicants under Section 438 of the Code of Criminal Procedure, 1973 for successive anticipatory bail in the event of their arrest in connection with FIR registered at **C.R. No.I-6 of 2017** with **RAJKOT DCB POLICE STATION, DISTRICT-RAJKOT,** for the offence punishable under Sections 406, 420, 465, 468, 471, 114 of the Indian Penal Code.

3. Learned Advocate appearing on behalf of the applicants would submit

that considering the nature of offence, the applicants may be enlarged on anticipatory bail by imposing suitable conditions.

4. On the other hand, the learned Additional Public Prosecutor appearing for the respondent-State has opposed this application and granting anticipatory bail to the applicants looking to the nature and gravity of the offence.

5. I have heard the learned advocates appearing for the respective parties, perused the investigation papers and have also taken into consideration the facts of the case, nature of allegations, role attributed to the applicants- accused. Without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicants. 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 Others,** reported at [2011] 1 SCC 6941, wherein the Hon'ble Apex Court has reiterated the law laid down by the Constitutional Bench in the case of **Shri Gurubaksh Singh Sibbia and others,** reported at (1980) 2 SCC 665.

Following aspects are also considered:-

(I) The F.I.R. is registered on 22-05-2017 for the offence which is alleged to have taken place on 10-02-2015;

(II) Learned Advocate for the applicants submitted that the applicants are lady accsued.

(III) Learned Advocate for the applicants submitted that the applicants had preferred anticipatory bail application being Criminal Misc. Application No.14829 of 2017, which came to be withdrawn in view of the protection granted by this Court in Quashing Petition. Reference is made to the order dated 15-06-2017 passed in Criminal Misc. Application No.14829 of 2017 and order dated 12-06-2017 passed in Criminal Misc. Application No.14067 of 2017. By which the order was passed for not taking coercive action against the applicants.

(IV) It appears that amount that was due and payable in the account in question namely AARVEE International has now been fully recovered and in this connection, Affidavit in reply on behalf of the Bank of Baroda, wherin in Para-3, it is recorded as under:

"3. I say and submit taht the present FIR in question was registered on the Complaint filed by the Respondent no.2 pertaining to loan account of Aavee International. It is most humbly submitted that Loan account was assigned to M/s Asrec India Ltd. No claim qua loan account assigned to M/s Asrec India Ltd. is outstanding against the Applicants / Accused persons. FIR was field for the criminal offences committed by the Applicants in accordance with law. The Respondent no.2 will not support the case of the Applicants / Accused persons for quashing of FIR, if any filed by the Applicants."

(V) Learned Advocate for the applicants submitted that offence predominently appears to be of settlement of loan account, which was being opearted for the purpose of running Industry.

(VI) Considering the fact that the applicants have been protected by this Court before withdrawal of their application for quashing under order dated 06-11-2023 and where in the said order, it has been recorded that all the dues of the Banks have been cleared and interim relief on that ground was extended.

(VII) Learned Additional Public Prosecutor under the instructions of the Investigating Officer is unable to bring on record any special circumstances against the applicants.

6. Learned Advocate for the applicants on instructions states that the applicants are ready and willing to abide by all the conditions, including imposition of conditions with regard to the powers of Investigating Agency to file an application before the competent court for his remand. He would further submit that upon filing of such application by the Investigating Agency, the right of the applicants-accused to oppose such application on merits may be kept open.

7. In the result, the present application is allowed by directing that in the event of arrest of the applicants herein in connection with FIR registered as **C.R. No.I-6 of 2017** with **RAJKOT DCB POLICE STATION, DISTRICT-RAJKOT,** the applicants shall be released on bail on their furnishing a personal bond of Rs.**10,000/-** (Rupees ten thousands only) EACH with one surety of the like amount on the following conditions that they:

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

(b) shall remain present at the concerned Police Station on **29-01-2024** between **11.00** AM and **02.00** PM;

(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 them from disclosing such facts to the court or to any police officer;

(d) shall not obstruct or hamper the police investigation and shall 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 their residence till the final disposal of the case till further orders without the permission of Trial Court;

(f) To mark presence once in month before the concerned Police Station till filing of the charge-sheet

(g) shall not leave India without the permission of the Trial Court and if having passport, shall deposit the same before the Trial Court within a week; and

(h) 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 the same 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 Trial Court shall not be influenced by the *prima facie* observations made by this Court while enlarging the applicants on bail.

10. The application is allowed accordingly. Rule is made absolute in the aforesaid terms. Direct service is permitted.

(A.Y. KOGJE, J)

PARESH SOMPURA