

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2792 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

No

5. Whether it is to be circulated to the Civil Judge?
No

LILARAM L REVANI

Versus

R D GANDHI

Appearance:

MR MB AHUJA for Petitioner

MR RC JANI for Respondent No. 1

MR SR DIVETIA, APP for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 13/05/97

ORAL JUDGEMENT

Lilaram A Revani, a resident of Baroda has filed
the present petition under Section 438 of the Code of
Criminal Procedure.

2. Respondent No. 1 Shri RD Gandhi, Chief Enforcement Officer, Enforcement Directorate, got an information on 14.4.1997 that the present petitioner and his brother Mangaram are dealing in foreign currency without holding any valid licence issued by Reserve Bank of India and they are carrying out the said business in their two shops titled as M/s. Janu Emporium and M/s Vijay Stores. On getting the said information, he carried out a raid on the shop of M/s Janu Emporium which is owned by the present petitioner and at the time of the said raid, the petitioner's brother Mangaram was present there and at the time of the raid, they found foreign currency in U.S. \$ 9355/- and Indian currency of Rs. 4.80 lacs. When the said search and raid was going on, it is the claim of the respondent No. 1 that, one person had come there to sell U.K. \$ 230/- and the said amount was also seized and the statement of the said person was also recorded and thereafter, the petitioner's brother Mangaram was detained by respondent No. 1. Respondent No. 1 issued a summons to the present petitioner on 15.4.1997 to appear before him. As he did not turn up, a second summons was issued for his appearance on 24.4.1997. But, on 23.4.1997, the present petitioner represented before respondent No. 1 - Chief Enforcement Officer through his advocate that he was ill and he was advised to have bed rest for two weeks and therefore, he may be granted permission not to appear on 24.4.1997. On getting the said application, respondent No. 1 informed the advocate of the present petitioner to inform the address where the petitioner was taking bed rest. But the petitioner informed through his advocate the advocate was not bound to disclose the same as it was privilege communication between the advocate and his client. He had again sent a telegram making the same prayer which was made in the application of 23.4.1997 and the same was also replied in the same manner by respondent No. 1 and thereafter he has come before this Court to get the anticipatory bail.

3. The object of anticipatory bail is to relieve a person from unnecessary apprehension or disgrace. Section 438 of Cr.P.C. is an extraordinary remedy and should be resorted to only in special cases. Anticipatory bail is not to be granted as a matter of rule. It is to be granted only when the Court is convinced that the person is of such a status that he would not misuse his liberty. For invoking the aid of anticipatory bail apart from the conditions of Section 437 of Cr.P.C. a special case should be made out for passing the order. It must be remembered that an order of anticipatory bail to some extent intrudes in the

sphere of investigation of crime and the Court must be cautious and circumspect in exercising such power of a discretionary nature. Some very compelling circumstances must be made out for granting anticipatory bail. Therefore, bearing this aspect regarding the anticipatory bail, I proceed to consider the claim made by the petitioner.

4. It is an admitted fact that M/s Janu Emporium was raided by respondent No. 1 and at the time of the said raid, foreign currency of U.S. \$ 9355/- and Indian currency of Rs. 4.80 lacs was found and at the time of the said raid, no material was produced before respondent No. 1 justifying to hold the said amount. One customer of petitioner had also appeared in the shop to sell foreign currency at the time of raid. It is also further admitted fact that the petitioner's brother Mangaram was detained by respondent No. 1 and his statement has been recorded by respondent No. 1. The petitioner has also clearly admitted in this petition that his brother Mangaram has given the statement before respondent No. 1 implicating himself as well as the present petitioner for having committed alleged illegal acts. No doubt, he has further averred that the said statement is retracted by Mangaram. If all the above circumstances are considered, then it could not be said that there is unnecessary apprehension of the petitioner.

5. At the stage of considering the anticipatory bail, it is not open for me to go into necessities of appreciation of evidence. I have to only find out as to whether the accusation made against the present petitioner is with some ulterior motive so as to consider his claim for anticipatory bail. Therefore, I am not inclined to express any opinion as regards the contention of Mr Ahuja, the learned advocate for the petitioner that the said statement made by the petitioner's brother Mangaram is not binding against the present petitioner and that the said statement being retracted is of no evidentiary value. All these contentions could be raised before the appropriate Court and it is for the appropriate Court to consider the same and to decide the same.

6. The petitioner has produced alongwith this petitioner three affidavits of three persons to show that the amount of U.S. \$ 9355/- was on account of depositing the said amount by these three persons. It is the claim of respondent No. 1 that the said three deponents have made the statement before him, that the affidavits are not the true disclosures of the said deponents. But it

is not either just or proper for me to express any opinion regarding the contention of the respondent No.1. I will say that these affidavits are coming in existence on 2.5.1997 i.e. more than 15 days after the amount in question has been seized alongwith other incriminating documents as per the claim of respondent No. 1 and they have been seized from the shop of the present petitioner. It must be also mentioned that the shop of the petitioner is far sell of Customs notified goods and it is not either a shop of money lender or a safe deposit vault. It is also not the claim that any of those three deponents is related to the petitioner.

7. Therefore, in my view of the material on record, namely, that the foreign currency was seized from the shop of the present accused alongwith Indian currency of Rs. 4.80 lacks after raid being carried in the said shop on getting an information that the petitioner and his brother were dealing illegally in foreign currency and at the time of the said raid a customer had come to sell foreign currency, it is not possible to hold that the accusation made against the present petitioner is malafide or with ulterior motive. No special

circumstances are either plead or shown for using the discretion in favour of the petitioner. His conduct in not responding to summons issued by respondent No. 1 shows that he wants to flee from justice. Therefore, in the circumstances, I hold that this is not a fit case for granting anticipatory bail.

8. The learned advocate for the petitioner has cited before me the cases of ABDUL REHMAN VS. STATE OF RAJASTHAN, II (1992) CCR 1827 of Rajasthan High Court and E. JOSEPH VS. ASSISTANT COLLECTOR OF CUSTOMS, 1984 (15) E.L.T. 84 of Madras High Court to support his contention that an application under Sec. 438 is tenable in law of the alleged offence alleged against the petitioner. I am not holding that the present petitioner is not tenable in law. What I have held is that in view of the material on record, I do not find that there is justification for granting anticipatory bail.

9. It was also contended by Mr Ahuja, learned advocate for the petitioner that in view of three affidavits filed by the petitioner alongwith this petition and a notification issued by Reserve Bank of India bearing No. F.E.R.A. 81/89-RB dated 9th August, 1989 as amended upto 5th June, 1995, the finding of the said currency note or U.S. dollars do not amount to an offence but the said question should be gone into only

after the investigation is completed and after the appreciation of evidence on record. I refrain from expressing any opinion regarding the said contention of him.

10. Before passing the final order, I have to make it clear that I have not made any definite conclusion regarding the claim of the petitioner. However, I want to make it quite clear that none of the observations made by me would be binding against the trial Court or any adjudicating authority and they have to decide the proceedings before them on their own merits. I reject this anticipatory bail application on the ground that no case is made out by the petitioner for justifying the exercise of discretionary power under Sec. 438 of Cr.P.C. Notice discharged.

13th May, 1997 (S.D.Pandit, J.)