

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 3833 of 2019**

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VINUBHAI CHIMANBHAI HARIJAN

Versus

STATE OF GUJARAT

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Appearance:

MR ASHOK N PARMAR(2431) for the Applicant(s) No. 1,2,3

MR. HARIVADAN MISHRA(3753) for the Applicant(s) No. 1,2,3

MR MITESH AMIN, PUBLIC PROSECUTOR for Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI****Date : 28/02/2019****ORAL ORDER**

1. Rule. Mr. Mitesh Amin, learned Public Prosecutor, waives service of notice of Rule on behalf of respondent-State.

2. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicants accused have prayed to release them on anticipatory bail in case of their arrest in connection with the FIR registered at C.R.No.I-31 of 2013 with Kapadwanj Rural Police Station, District Kheda for the offences punishable under Sections 465, 467, 468, 471 and 114 of the Indian Penal Code.

3. Learned advocate for the applicants submits that the nature of allegations are such for which custodial interrogation at this stage is not

necessary. Besides, the applicants are available during the course of investigation and will not flee from justice. In view of the above, the applicants may be granted anticipatory bail.

3.1. 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 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 applicants accused to oppose such application on merits may be kept open.

3.2. Learned advocate for the applicants has produced on record the order dated 18.09.2013 passed by this Court in the case of co-accused i.e. accused Nos. 6 and 7. It is submitted that the role attributed to the aforesaid co-accused is similar to that of the present applicants.

3.3. It is further pointed out that the present applicants initially filed Criminal Misc. Application No.10406 of 2013 before this Court. This Court granted stay vide order dated 20.09.2013. However, recently on 03.12.2018, the said application came to be withdrawn and therefore now the applicants have filed this

application under Section 438 of the Code of Criminal Procedure.

3.4. Thus, learned advocate for the applicants submits that on the ground of parity, case of the applicants be considered by this Court.

4. Learned Public Prosecutor appearing on behalf of the respondent - State has opposed grant of anticipatory bail looking to the nature and gravity of the offence.

5. Having heard the learned advocates for the parties and on perusing the material placed on record as well as 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 applicants.

6. I have also considered the following aspects:

Co-accused are released on anticipatory bail by this Court. Thus, on the ground of parity, I am inclined to exercise the discretion in favour of the applicants.

7. 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. as 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.**, as reported at (1980) 2 SCC 665.

8. In the result, the present application is allowed by directing that in the event of applicants herein being arrested pursuant to FIR registered at C.R.No.I-31 of 2013 with Kapadwanj Rural Police Station, the applicants shall be released on bail on furnishing a personal bond of Rs. 10,000/- (Rupees Ten Thousand only) each with one surety of 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 concerned Police Station on 07.03.2019 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 their residence till the final disposal of the case till further orders;

(f) shall not leave India without the permission of the Court and if having passport shall deposit the same before the 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;

9. 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.

10. At the trial, the Trial Court shall not be influenced by the *prima facie* observations made by this Court in this order while enlarging the applicants on bail.

11. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(VIPUL M. PANCHOLI, J)

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