

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION NO. 20926 of 2021**

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SANJAY BALDEVBHAI SOLANKI

Versus

STATE OF GUJARAT

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Appearance:

MR VISHVAJITSINH D CHAUHAN(10160) for the Applicant(s) No. 1,2

MR.KISHAN PRAJAPATI(7074) for the Applicant(s) No. 1,2

MS MOXA THAKKAR, APP (2) for the Respondent(s) No. 1

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**CORAM:HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI****Date : 30/11/2021****ORAL ORDER**

1. By way of the present application under section 438 of the Code of Criminal Procedure, 1973, the applicants - accused have prayed for anticipatory bail in connection with the FIR being C. R. No. 11191035211827 of 2021, registered with Naroda Police Station, District: Ahmedabad for the offences punishable under Sections 337, 323, 294(b), 506(2), 427 and 114 of the Indian Penal Code, 1860 (IPC) and Section 135 of the GP Act.

2. Heard learned advocate Mr. Kishan Prajapati for the applicants and learned APP Ms. Moxa Thakkar for the respondent - State.

2.1 **Rule**, returnable forthwith. Learned APP waives service.

3. The learned advocate for the applicants has submitted that

the applicants are apprehending arrest in connection with the aforesaid FIR. It is submitted that the learned Sessions Judge has rejected the application filed by the present applicants for granted of anticipatory bail. The learned advocate for the applicants has submitted that the applicants are charged with the aforesaid offences, however, the ingredients of the said offences are not satisfied and no *prima facie* case has been made out against them. Besides, the prime accused in the case is already released on bail. Further, the applicant No. 2 has no antecedents, whereas, the applicant No. 1 has only one antecedent. Further, without admitting anything against the applicants, the applicants are ready and willing to deposit an amount of Rs.3,500/- towards the alleged damage caused to the government vehicle. Accordingly, in the facts and circumstances of the case, it is urged that present application may kindly be allowed and the applicants may be granted anticipatory bail.

3.1 The learned advocate for the applicants has further submitted that the applicants will keep themselves available during the course of investigation as well as during trial and will not flee from justice.

3.2 The 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 remand. The learned advocate further submitted 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. The learned advocate, therefore, submitted that considering the above facts,

the applicants may be granted anticipatory bail.

4. *Per contra*, the learned APP appearing on behalf of the respondent – State has opposed the grant of anticipatory bail looking to the nature and gravity of the offence. It is submitted that the investigation be continued.

5. Having heard the arguments advanced by 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 applicants – accused and the fact that the applicant No. 2 has no antecedent, whereas, the applicant No. 1 has only one antecedent, without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicants. As per catena of decisions of the Hon'ble Apex Court there are mainly two factors which are required to be considered by this Court;

- i) *prima facie* case;
- ii) requirement of accused for custodial interrogation.

5.1 Therefore, in the facts and circumstances of the present case, this Court is inclined to consider the case of the applicants.

5.2 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**. Further, this Court has

also taken into consideration the ratio laid down in the case of ***Sushila Aggarwal and Ors. Vs. State (NCT of Delhi) and Anr.*** in Special Leave Petition No. 7281-7282/2017 dated 29.01.2020.

6. 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 aforesaid FIR on executing personal bonds of **Rs.10,000/- (Rupees Ten Thousand only) each** with one surety **each** of like amount on the following conditions:

- a) shall cooperate with the investigation and make available for interrogation whenever required;
- b) shall remain present at concerned Police Station on **22.12.2021** 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;
- 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 the remand application without being influenced of the observations made by this Court;
- h) shall deposit Rs.3,500/- before the trial Court concerned without prejudice to the rights and contentions.

7. 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.

7.1 At the trial, the concerned trial Court shall not be influenced by the *prima facie* observations made by this Court in the present order.

8. Rule is made absolute accordingly. **Direct service** is permitted.

**[ A. C. Joshi, J. ]**

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