

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 15340 of 2022

=====

CHUNARA CHETANBHAI VADILALBHAI

Versus

STATE OF GUJARAT

=====

Appearance:

KARTIKKUMAR G BAROT(9453) for the Applicant(s) No. 1

MR RONAK RAVAL ADDITIONAL PUBLIC PROSECUTOR for the Respondent(s)
No. 1

=====

CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 30/08/2022

ORAL ORDER

1. Heard learned Advocate Mr. Kartikkumar G. Barot on behalf of the applicant and learned Additional Public Prosecutor Mr. Ronak Raval on behalf of the respondent-State.
2. Rule. Learned APP waives service of Rule on behalf of the respondent-State.
3. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant prays for being released on anticipatory bail in connection with **FIR No. 11192002220293 of 2022** registered with **Aslali Police Station, District Ahmedabad (Rural)**, on 25.06.2022 for offences punishable under Sections 65(e), 98(2) and 81 of the Gujarat Prohibition Act.

4. Learned Advocate Mr. Barot for the applicant would submit that the nature of allegations are such for which custodial interrogation of the

applicant at this stage is not necessary. Besides, the applicant is available during the course of investigation and will not flee from justice. In view of the above, the applicant may be granted anticipatory bail.

Learned Advocate Mr. Barot for the applicant on instructions states that the applicant is 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. Learned Advocate would further submit that upon filing of such application by the Investigating Agency, the right of applicant-accused to oppose such application on merits may be kept open.

5. This application has been vehemently opposed by learned Additional Public Prosecutor Mr. Raval appearing on behalf of the respondent-State, who would submit that looking to the nature and gravity of the offence the applicant may not be released on anticipatory bail by this Court.

6. Having heard the learned Advocates for the parties as well as documents on record, the following relevant aspects are considered by this Court:

[1] That the present applicant was not arrested from the place where the prohibited liquor has been seized.

[2] It appears that the name of the present applicant is arraigned as an accused on basis of statement of one person Mr. Rameshbhai, whose name also appears to have been arraigned on the basis of a statement by one of the persons who was travelling the auto rickshaw, which was carrying the prohibited material.

[3] That this Court having considered the case of Mr. Rameshkumar Nyalaram Dhiravat for grant of anticipatory bail vide

an order dated 20.07.2022

[4] That the value of the prohibited material was approximately Rs. 7000/-.

7. In this view of the matter and considering the law laid down by the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.** reported in (2011)1 SCC 694, this Court is inclined to consider this application.

8. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to the **FIR No. 11192002220293 of 2022** registered with **Aslali Police Station, District Ahmedabad (Rural)**, the applicant shall be released on bail on furnishing a personal bond of Rs.10,000/- (Rupees Ten Thousand only) with one surety of like amount, on the following conditions that the applicant:

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) **shall remain present at the concerned Police Station on 05.09.2022 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 or till further orders;

(f) shall not leave India without the permission of the Court and, if having passports shall surrender the same before the Trial Court within a week.

9. Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicant to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. The applicant 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 applicant, 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 while enlarging the applicant on bail. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(NIKHIL S. KARIEL,J)

NIRU