

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 7669 of 2023**

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PRIYANKA D/O PRAVINBHAI SHIKARI WD/O AKSHAY CHAUDHARI
Versus
STATE OF GUJARAT

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Appearance:

ANKIT M MODI(7418) for the Applicant(s) No. 1

MR KISHAN R CHAKWAWALA(9846) for the Applicant(s) No. 1

MR LB DABHI APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 31/08/2023**ORAL ORDER**

1. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant accused has prayed for release on anticipatory bail in the event of arrest in connection with **FIR No. 11191048230250 of 2023 registered with Sarkhej Police Station, Dist.Ahmedabad** for the offences punishable under Sections 306, 323, 294(B) and 114 of the Indian Penal Code, 1860.
- 2.1 Learned advocate for the applicant submits that present applicant has nothing do with the commission of offence and she is falsely roped-in in the offence and the allegations levelled against her are baseless merely based on one video recording on whats app. Learned advocate for the applicant also submits that other co-

accused are either released on regular bail or anticipatory bail by the trial Court. He submits that applicant is lady accused and at present she is conceiving and carrying pregnancy of nine months and, therefore, requests that this Court may exercise jurisdiction and entertain this application by granting anticipatory bail. He further submits that the applicant is already protected vide order dated 06.07.2023 passed by this Court.

- 2.2 Learned advocate for the applicant submits that the nature of allegations are such for which custodial interrogation 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.
- 2.3 Learned advocate 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. He 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.
3. Learned Additional Public Prosecutor appearing on behalf of the respondent – State has opposed grant of anticipatory bail looking to the nature and gravity of the

offence. He also submits that applicant is involved in the offence looking to the whats-app chat and recording which amounts to dying declaration which shows that due to abetment of applicant her husband committed suicide. Considering the role attributed to the present applicant, he has requested to dismiss the present application. Further, he has submitted that even warrant under Section 70 of Cr.P.C. is issued against the present applicant and, therefore, this Court may not entertain the present application.

- 4.1 This Court has gone through the order dated 06.07.2023 whereby the coordinate Bench of this Court continued the interim relief granted earlier to the applicant that no coercive step be taken against the present applicant and, therefore, the applicant cannot be treated as absconder.
- 4.2 Having heard the learned advocate for the parties and perusing the investigation papers, it is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon'ble Apex Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the

accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided. I have considered the following aspects.

- (1) The allegation against the present applicant are general in nature which are daily and routine course of family life;
 - (2) the applicant is lady accused and carrying pregnancy of nine months
 - (3) the co-accused are either released on regular bail or granted anticipatory bail by the trial Court or coordinate Bench of this Court
 - (4) there is no criminal antecedent attributed to the present applicant
 - (5) the applicant is ready and willing to co-operate with the investigation.
5. Considering the aforesaid aspects and the law laid down by the Hon'ble Apex Court in the case of **Siddharam**

Satlingappa Mhetre vs. State of Maharashtra and Ors. reported in **(2011) 1 SCC 6941**, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of **Shri Gurubaksh Singh Sibbia & Ors.** reported in **(1980) 2 SCC 665** and also the decision in the case of **Sushila Aggarwal v. State (NCT of Delhi)** reported in **(2020) 5 SCC 1**, this Court is inclined to allow the present application.

6. In the result, the present application is allowed by directing that in the event of applicant herein being arrested in connection with the FIR **No. 11191048230250 of 2023 registered with Sarkhej Police Station, Dist.Ahmedabad**, 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 she:
- (a) shall cooperate with the investigation and make herself available for interrogation whenever required;
 - (b) **shall remain present at the concerned Police Station on 13.10.2023 [looking to the fact that applicant is carrying nine months pregnancy] between 11.00 a.m. and 2.00 p.m. and the IO shall ensure that no unnecessary harassment or inconvenience is caused to the applicant;**
 - (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 her 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 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;
7. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicant. 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. 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.
8. 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.

9. Rule is made absolute to the aforesaid extent. Application is disposed of accordingly. Direct service is permitted.

MISHRA AMIT V.

(HASMUKH D. SUTHAR,J)