

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO.  
13864 of 2023**

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GIRISHKUMAR BABUBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR BM MANGUKIYA(437) for the Applicant(s) No. 1

MS BELA A PRAJAPATI(1946) for the Applicant(s) No. 1

MR HARDIK MEHTA, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR****Date : 27/10/2023****ORAL ORDER**

RULE. Learned APP waives service of notice of Rule on behalf of the respondent – State of Gujarat.

[1.0] By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant accused has prayed to release him on anticipatory bail in the event of his arrest in connection with the FIR being **C.R. No.11188009230348 of 2023 dated 27.06.2023** registered with **Modasa Town Police Station, District Aravalli** for the offences punishable under Sections 304 and 114 of the Indian Penal Code, 1860.

[2.0] Learned advocate for the applicant submits that the applicant has nothing to do with the offence and he has been falsely enroped in the offence. Further, the applicant is a labour contractor and he has only allotted the sub-contract of development / construction to one Imran Jabir and thus, there is

no active participation and role attributed to the present applicant in the alleged offence. Whatever work is allotted is carried out by one Imran Jabir and the applicant has not shown any negligence and hence, now nothing remains to be recovered or discovered from the present applicant and therefore, custodial interrogation at this stage is not necessary. Besides, the applicant is available during the course of investigation and will not flee from justice. Even, the matter is settled between the contractor and the deceased labourers and they have preferred quashing petition and the coordinate Bench of this Court has also been pleased to stay the proceedings. Further, the applicant is not having any past antecedent. In view of the above, he has requested to allow the present application and grant anticipatory bail to the applicant.

[3.0] 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 has submitted that present applicant is a contractor and without providing any safety measures and without taking care of the labourers the applicant has been negligent because of which incident took place. Hence, considering the seriousness of the offence and as investigation is at preliminary stage and as custodial interrogation of the applicant is required, he has requested to dismiss the present application.

[4.0] 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) Offence is not punishable with life imprisonment or death penalty;
- (2) Insofar as allegation of negligence is concerned, the role attributed to the present applicant is that he has not received work but he sublet the work to one Imran Jabir;
- (3) The coordinate Bench has considered the settlement between the contractor and victim labourers and interim relief is granted *qua* further investigation of the FIR;
- (4) Applicant is not having past antecedent;
- (5) The right of the prosecution to seek remand of the

applicant is kept open

[5.0] 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**, I am inclined to allow the present application.

[6.0] In the result, the present application is allowed by directing that in the event of applicant herein being arrested in connection with the FIR being **C.R. No.11188009230348 of 2023 dated 27.06.2023** registered with **Modasa Town Police Station, District Aravalli**, 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 he:

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) **shall remain present at the concerned Police Station on 06/11/2023 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 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 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;

[7.0] 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.

[8.0] 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.

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

**(HASMUKH D. SUTHAR, J.)**

*Ajay*