

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO.
14654 of 2023**

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YOGESH ROSHANLAL GUPTA

Versus

STATE OF GUJARAT

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Appearance:

MR ASHISH M DAGLI(2203) for the Applicant(s) No. 1

MR NAYAN L GUPTA(11798) for the Applicant(s) No. 1

MRS NISHA M PARIKH(2397) for the Respondent(s) No. 1

MS SHRUTI PATHAK, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 26/10/2023****ORAL ORDER**

[1.0] RULE. Learned APP waives service of notice of Rule on behalf of the respondent – State.

[2.0] 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.11191008230073 of 2023 dated 18.02.2023** registered with **Chandkheda Police Station, Ahmedabad City** for the offences punishable under Sections 376(2)(n), 365, 366 and 34 of the Indian Penal Code, 1860.

[3.0] Learned advocate for the applicant submitted that present applicant has nothing to do with the offence and he has been falsely enroped in the offence. Further, the prosecutrix is having

a doubtful character as she was earlier married with one Krishnapalsinh and out of such wedlock, the complainant has two daughters and one son and thereafter, due to matrimonial discord with her husband, complainant started residing separately and thereafter, she came in contact of one Ismailkhan Badarkhan Malek with whom she developed physical relationship and she also executed one *Maitrikarar*. Thereafter, the complainant lodged one complaint against said Ismailkhan alleging about the incident dated 15.01.2023 wherein though alleged offence occurred during September, 2022, no whisper is made about the said complaint in the present FIR. Further, it is submitted that it is falsely stated in the FIR that present applicant has identified himself as police officer. Further, present applicant has nothing to do with the present offence and he never met the complainant. Even, the complainant is habitual of filing such false complaints in connivance and collusion of some miscreant people. Further, the complainant has also filed an affidavit wherein she has also tried to enrope higher police officials and when complaint is filed by the police officials against some of the reporters, subsequently the present applicant is arraigned as accused and implicated in such serious offence. Further, the applicant is not having past antecedents and is a law abiding citizen and ready and willing to join and cooperate in the investigation. Further, considering the conduct of the complainant and her differences with Ismailkhan, as the present applicant is friend of said Ismailkhan, present applicant is sought to be falsely implicated in the offence. Further, warrant under

section 70 of the CrPC is issued against the present applicant which is challenged by the present applicant. Hence, he requested to allow the present application as there is no requirement of custodial interrogation.

[4.0] *Per contra*, learned APP appearing for the State has vehemently opposed the present application and stated that, the present applicant is involved in such a serious offence and even the quashing petition being Special Criminal Application No.3934/2023 is dismissed by the coordinate Bench of this Court vide order dated 03.05.2023 and therefore, *prima facie* offence is made out against the present applicant. Further, summons under Section 160 of the CrPC is issued against the applicant and thereafter, warrant under Section 70 of the CrPC has also been issued but the applicant did not respond and he is on run and till date, the applicant is not traced out from Uttar Pradesh. Further, it is not true that the applicant is not named in the earlier complaint, prosecutrix was knowing his name and has mentioned the present applicant as known person of Ismailkhan and it is stated that both of them had exploited the prosecutrix. In view of the above, present is not a fit case wherein jurisdiction is required to be exercised in favor of the applicant. Further, considering the past antecedent of the present applicant and as the applicant is involved in serious offence, present applicant is required to be thoroughly investigated. Further, under the guise of affidavit sworn by the complainant, the accused have tried to involve some high ranking police officials and tried to tamper with the evidence and blackmail them for the purpose of

extorting huge amount of money and thus have misused a poor lady – prosecutrix and therefore also, custodial interrogation of the applicant is necessary. Further, in the present case, prosecutrix is subjected to rape twice and has also been exploited by the present applicant. Even, in the history given before the Doctor, the prosecutrix has given the name of the present applicant. Considering all these facts, as investigation is at nascent stage as also considering the fact that applicant is highly influential person and in peculiar facts of the present case, she has requested not to exercise the discretion in favor of the applicant and has requested to dismiss the present application.

[5.0] Learned advocate for the original complainant adopting the submissions canvassed by the learned APP has also opposed the present application and stated that there is *prima facie* involvement of the present applicant in the offence and the applicant has twice exploited the prosecutrix in his bungalow. Hence, she has also requested to dismiss the present application.

[6.0] Heard learned advocates appearing for the respective parties and given thoughtful consideration to the arguments canvassed by both sides. 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.

[7.0] Going through the FIR, it appears that the FIR is filed by the prosecutrix against Ismailkhan Badarkhan Malek and his friend. Present applicant is friend of Ismailkhan. It is undisputed and admitted fact that Ismailkhan is arrested and he is in custody. The said Ismailkhan was in physical relationship with the complainant and at the instance of said Ismailkhan, the complainant went to the bungalow of the present applicant where the complainant has been twice exploited as he has impersonated himself as a higher Police Officer. Two witnesses i.e. driver and office boy of the complainant have supported the said fact of presence of accused Ismailkhan as well as the present applicant at bungalow Nos.12 and 13 of the present applicant. Further, going through the history given by the complainant before the Doctor, *prima facie* it appears that the present applicant's name is given by the prosecutrix to the Doctor. Even, in the statement of the complainant recorded under Section 164 of the CrPC, name of the present applicant is clearly stated. In view of the above, as

the prosecutrix has clearly stated that against her will and wish, she was exploited by the present applicant as complainant's brother was facing criminal proceedings in the guise to get help and favor from accused and investigation is at preliminary stage, the submission on behalf of the applicant that complainant has a bad character or was having relationship with accused Ismailkhan is immaterial.

[7.1] Once the prosecutrix has stated that she was exploited against her will and that too under duress and under the temptation by present applicant of helping the accused Ismailkhan by impersonating himself as high ranking police official, the question of equipping the present applicant with an order of anticipatory bail does not arise. Nonetheless, in the earlier complaint also, unknown person who is known by accused Ismailkhan is clearly stated and in connection of that complaint also, investigation is going on. Considering the aforesaid facts, the submission of learned advocate for the applicant that complainant has not named the present applicant in the first complaint is not a ground to grant anticipatory bail to the applicant.

[7.2] Learned advocate for the applicant argued that victim has changed her stand at every stage and insofar as affidavit sworn by the complainant is concerned, going through the investigation papers it *prima facie* reveals that said affidavit is prepared by the reporters taking undue advantage as applicant has impersonated himself as higher Police Officer and tried to involve high ranking

police officials in actual for extorting 8 Crores and it appears that some miscreants and unscrupulous elements have played active role to extort money from higher police officials and in this regard, separate complaint is also filed against such reporters. Considering the aforesaid facts, thorough custodial interrogation of the applicant and qualitative investigation is necessary to unearth the truth.

[7.3] Further, the quashing petition being Special Criminal Application No.3934/2023 filed by the present applicant for quashing of the present FIR has been dismissed by the coordinate Bench of this Court vide order dated 03.05.2023 meaning thereby, *prima facie* offence is made out and therefore, question of complaint being frivolous does not arise at this stage. It is also pertinent to note that summons under section 160 of CrPC was issued against the applicant and subsequently warrant under Section 70 of the CrPC also came to be issued which till date has not been responded to by the present applicant and thus, the applicant is absconding since long and therefore, if the present applicant is granted anticipatory bail then it will be overstepping the jurisdiction under Section 70(2) of the CrPC. Even, the complainant in her statement recorded under Section 164 of CrPC as also in the history given before the Doctor has given the name of the present applicant and hence, considering the gravity of such serious offence against woman, present is not a case wherein discretion can be exercised.

[7.4] It is also pertinent to note that present applicant is having

past antecedent i.e. FIR being I-CR No.178/2011 registered with Gujarat University Police Station for the offences punishable under Sections 364A, 365, 506(2) and 114 of the IPC and hence, possibility of tampering with the evidence cannot be ruled out as despite the fact that FIR is lodged on 17.02.2023, the applicant has been obstructing the investigation and is out of reach of the investigating agency. In view of the law laid down by the Hon'ble Apex Court in case of **State of Haryana vs. Dharamraj** reported in **2023 INSC 784; Lavesh vs. (NCT of Delhi)** reported in **(2012) 8 SCC 730; Abhishek vs. State of Maharashtra** reported in **2022 (8) SCC 282 and Prem Shankar Prasad vs. State of Bihar** reported in **2021 SCC OnLine SC 955**, it is observed that as accused remained absconding, this is not a fit case to exercise the jurisdiction in favour of the applicant.

[7.5] Further, the submission on behalf of the applicant that present offence is an off-shoot of differences between the complainant and accused Ismailkhan also appears to be without any substance. It appears that by exploiting the complainant, some miscreants are trying to extort huge sum of money from high ranking police officials and therefore also, such *modus operandi* needs to be thoroughly investigated for which custodial interrogation of the applicant is required.

[8.0] Considering the aforesaid all facts as also keeping in mind the law laid down by the Hon'ble Supreme Court in the case of **Siddharam Satlingappa Mhetre V/s State of Maharashtra and Others** reported in **(2011) 1 SCC 694**, and going through the

material very carefully available against the accused it appears that herein, no complaint has been made with view to humiliate or tarnish the image of the present applicant.

[8.1] Further, considering the allegation made in the FIR, for the qualitative investigation, presence of applicant is required and custodial interrogation is necessary. Thus, *prima facie* it appears that accused has played active role and qualitative investigation is necessary in the matter.

[8.2] When serious offences are disclosed and involvement of an accused is *prima facie* established then, the Court would be loath to lean in favour of grant of pre-arrest bail in absence of any other overriding considerations. The alleged offence is in nature of serious one against a woman and this Court is conscious of the safeguards provided under Section 438 of the CrPC and concept of the personal liberty. But herein, this court is of considered view that, the present offence is not just an offence against any individual rather the larger societal interest and in such circumstances, the delicate balance is required to be maintained between two rights one against the personal liberty and second is societal interest. Arrest is part of the process of investigation and intended to secure several purposes in which the accused may provide information, during the discovery of material facts and relevant information. In such circumstances, when investigation is at preliminary stage, if, anticipatory bail is granted, it may hamper the investigation and to collect the material and more information and find out the involvement of

other persons, custodial interrogation is also necessary.

[9.0] This court has also kept in mind the law laid down by the **Hon'ble Supreme Court** in the case of **Pratibha Manchanda vs The State Of Haryana** reported in **AIR 2023 SC 3307**, wherein para 19 read as under :

"19. The relief of Anticipatory Bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice.

The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome."

Even in the case of **Jai Prakash Singh V/s State of Bihar and another**, reported in **(2012) 4 SCC 379**, **Hon'ble Supreme Court** was pleased to hold:

"Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty."

[9.1] The object of anticipatory bail is that person should not be

harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. In present case, no any such sort of allegation or bias is found out. It is needless to say that order under Section 438 is not a passport to the commission of offence nor a shield against any serious accusation, which adversely affects the society.

[9.2] In the above facts and circumstances and considering the observations on the legal aspect of the matter, as applicant is actively involved in the offence therefore, I have absolutely no doubt that if applicant is equipped with such an order of anticipatory bail before he is interrogated by the Police, it would greatly harm the investigation and would impede the prospects of unearthing the truth.

[10.0] Having considered nature and seriousness of the charge, *prima facie* involvement of accused and possibility of tempering with evidences, it does not appear to be just and proper to exercise the discretion in favour of the applicant and accordingly, the application for anticipatory bail is **dismissed**. Rule is hereby discharged.

(HASMUKH D. SUTHAR, J.)

Ajay