

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 12873 of 2022**

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YASH ARVIND MISHRA

Versus

STATE OF GUJARAT

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Appearance:

MR. SURAJ A SHUKLA(7185) for the Applicant(s) No. 1

MR. RAJENDRA D JADHAV(10026) for the Respondent(s) No. 1

MS CM SHAH, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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**CORAM: HONOURABLE MR. JUSTICE HEMANT M.
PRACHCHHAK****Date : 20/12/2022****ORAL ORDER**

1. This is an application by the applicant under Section 438 of the Code of Criminal Procedure, 1973 for anticipatory bail in the event of his arrest in connection with FIR registered at **C.R.No.11210045222717 of 2022** before Pandesara Police Station, Surat for the offence under Section 406 of the Indian Penal Code and Section 66(c) of the Information Technology Act.

2. Learned advocate appearing on behalf of the applicant would submit that the applicant is innocent and falsely implicated in the alleged offence. He submitted that one Sumit Tiwari is alleged to have committed the said offence and the present applicant is nowhere named in the alleged transaction except issuance of one cheque which was in the name of the present applicant. He submitted that the applicant is ready and

willing to deposit the total defrauded amount as per the FIR being Rs.1,93,480/- before the concerned Bank. He further submitted that the applicant had personally remained present before the concerned Investigating Officer as directed by the Co-ordinate Bench of this Court vide order dated 18.07.2022 and his statement is also recorded. He, therefore, submitted that considering the nature of offence, the applicant may be enlarged on anticipatory bail by imposing suitable conditions.

3. On the other hand, the learned Additional Public Prosecutor appearing for the respondent-State has opposed this application and granting anticipatory bail to the applicant looking to the nature and gravity of the offence. Mr.Rajendra Jadhav, the learned counsel appearing for the respondent No.2 - original complainant has adopted the submissions made by the learned APP and submitted that the present application may be dismissed looking to the seriousness of the offence.

4. I have heard the learned Advocates appearing for the respective parties and perused the investigation papers and have also taken into consideration the facts of the case, nature of allegations, role attributed to the applicant-accused. It seems that the loan advanced to the present applicant and the he has used the same for his personal purposes. The said amount is deposited in the name of the original complainant and now the recovery proceedings are initiated against the original complainant. Considering the fact that the applicant is ready and willing to deposit the defrauded amount and without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicant. 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.** as reported at [2011] 1 SCC 6941, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitutional Bench in the case of **Shri Gurubaksh Singh Sibbia & Ors.**, as reported at **(1980) 2 SCC 665.**

5. Following aspects are also considered:-

- I. The FIR is registered on 21.06.2022 for the offence which is alleged to have taken place since 20.10.2021 till 21.06.2022.
- II. Considering the fact that the applicant is protected against arrest vide order dated 18.07.2022 which has continued from time to time.
- III. Considering the fact that the applicant is ready and willing to deposit the defrauded amount.
- IV. Considering the fact that the present applicant is nowhere named in the alleged transaction except issuance of one cheque.
- V. Learned APP under instructions of IO is unable to bring on record any special circumstances against the applicant.

6. Learned Advocate for the applicant on instructions states that the applicant is ready and willing to abide by all the conditions, including impositions of conditions with regard to the 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.

7. In the result, the present application is allowed by directing that in the event of arrest of the applicant herein in connection with FIR registered at **C.R.No.11210045222717 of 2022** before Pandesara Police Station, Surat, the applicant shall be released on bail on his furnishing a personal bond of Rs.10,000/- (Rupees ten thousands only) with one surety of the like amount on the following conditions that he shall:

- (a) shall cooperate with the investigation and make available for interrogation whenever required;
- (b) shall remain present at the concerned Police Station on **27.12.2022** between 11.00 AM and 02.00 PM;
- (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 from disclosing such facts to the court or to any police officer;
- (d) shall not obstruct or hamper the police investigation and shall 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 without the permission of Trial Court;

- (f) shall not leave India without the permission of the Trial 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 the same on merits;
- (h) shall deposit the amount of Rs.1,93,780/-, without prejudice to his rights and contentions, before the concerned Bank within a period of 4 (Four) weeks from the date of receipt of copy of this order, which shall be subject to the final outcome of the criminal proceedings;**

8. 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. 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.

9. 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.

Direct service is permitted.

(HEMANT M. PRACHCHHAK,J)

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