

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 19109 of 2022

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JAY ASHOKBHAI PAREKH

Versus

STATE OF GUJARAT

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Appearance:

MR SHALIN MEHTA SENIOR COUNSEL WITH ANSHUL N SHAH(8540) for
the Applicant(s) No. 1

MS CM SHAH APP for the Respondent(s) No. 1

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**CORAM: HONOURABLE MR. JUSTICE HEMANT M.
PRACHCHHAK**

Date : 17/11/2022

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 No. 11191034220261 of 2022 registered with Naranpura Police Station, Ahmedabad for offence under Sections 420 and 114 etc. of Indian Penal Code and Section 66(d) of the Information Technology Act.

2. Learned advocate appearing on behalf of the applicant would submit 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 APP 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.

4. I have heard Mr. Shalin Mehta, learned Senior Counsel assisted by Mr. Anshul N. Shah, learned Counsel for the applicant and Mr. 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 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. At this stage, it is pertinent to note that the learned Trial Court has already protected the applicant vide Criminal Misc. Application No. 5015 of 2022. Further, the issue raised in present application is directly covered by the decision of the Hon'ble Apex Court in case of **Satender Kumar Antil vs. Central Bureau of Investigation and another reported in 2022 LiveLaw (SC) 577**. Therefore, it is relevant to take into account the observations made by the Hon'ble Apex Court in

case of **Satender Kumar Antil (supra)**, wherein Hon'ble Apex Court has observed as under:-

" We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the Courts below. The guidelines are as under:

Categories/Types of Offences

A) Offences punishable with imprisonment of 7 years or less not falling in category B & D.

B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

*C) Offences punishable under **Special Acts** containing stringent provisions for bail like NDPS (S.37), PMLA (S.45), UAPA (S.43D(5), **Companies Act**, 212(6), etc. D) Economic offences not covered by **Special Acts**.*

REQUISITE CONDITIONS

1) Not arrested during investigation.

2) Cooperated throughout in the investigation including appearing before Investigating Officer whenever called.

(No need to forward such an accused along with the chargesheet (Siddharth Vs. State of UP, 2021 SCC online SC 615)

CATEGORY A

After filing of chargesheet/complaint taking of cognizance

a) Ordinary summons at the 1st instance/including permitting appearance through Lawyer.

b) If such an accused does not appear despite service of summons, then Bailable Warrant for physical appearance may be issued.

c) NBW on failure to failure to appear despite issuance of Bailable Warrant.

d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

e) Bail applications of such accused on appearance may be decided w/o the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORY B/D

On appearance of the accused in Court pursuant to process issued bail application to be decided on merits.

CATEGORY C

Same as Category B & D with the additional condition of compliance of the provisions of Bail under NDPS S.37, 45 PMLA, 212(6) [Companies Act](#) 43 d(5) of UAPA, POSCO etc.” Needless to say that the category A deals with both police cases and complaint cases.

The trial Courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by learned ASG is that where the accused have not cooperated in the investigation nor appeared before the Investigating Officers, nor answered summons when the Court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

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Section 41, 41A and 60A of the Code

CHAPTER V

ARREST OF PERSONS

41. When police may arrest without warrant.—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that

information that such person has committed the said offence;

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of [section 42](#), no person concerned in a non- cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

41A. Notice of appearance before police officer.—

(1) [The police officer shall], in all cases where the arrest of a person is not required under the provisions of sub-section (1) of [section 41](#), issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

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60A. Arrest to be made strictly according to the [Code](#).—No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.”

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SUMMARY/CONCLUSION

73. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments.:

a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

b) *The investigating agencies and their officers are duty-bound to comply with the mandate of [Section 41](#) and [41A](#) of the Code and the directions issued by this Court in Arnesh Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.*

c) *The courts will have to satisfy themselves on the compliance of [Section 41](#) and [41A](#) of the Code. Any non-compliance would entitle the accused for grant of bail.*

d) *All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed under [Section 41](#) and [41A](#) of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of [Section 41A](#) of the Code.*

e) *There need not be any insistence of a bail application while considering the application under [Section 88](#), [170](#), [204](#) and [209](#) of the Code.*

f) *There needs to be a strict compliance of the mandate laid down in the judgment of this court in Siddharth (supra).*

g) *The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.*

h) *The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions.*

After doing so, appropriate action will have to be taken in light of [Section 440](#) of the Code, facilitating the release.

i) *While insisting upon sureties the mandate of [Section 440](#) of the Code has to be kept in mind.*

j) An exercise will have to be done in a similar manner to comply with the mandate of [Section 436A](#) of the Code both at the district judiciary level and the High Court as earlier directed by this Court in *Bhim Singh (supra)*, followed by appropriate orders.

k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

l) All State Governments, Union Territories and High Courts are directed to file affidavits/ status reports within a period of four months.

5.1 In the decision in case of ***Arnesh Kumar vs. State of Bihar reported in (2014) 8 SCC 273***, Hon'ble Apex Court has observed as under:-

“Head Note:- A. Criminal Procedure Code, 1973 — Ss. 41, 41-A and 57 — Power of police to arrest without warrant — Proper exercise of — Balance between individual liberty and societal order while exercising power of arrest — Directions issued

— Directions issued herein, held, shall apply to all such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine — Police officers shall not arrest the accused unnecessarily and Magistrate shall not authorise detention casually and mechanically — Failure to comply with these directions, shall, apart from rendering police officers concerned liable for departmental action, also make them liable to be punished for contempt of court — Authorising detention without recording reasons by Judicial Magistrate concerned shall be liable for departmental action by appropriate High Court — Copy of judgment to be forwarded to Chief Secretaries as also DGs of Police of

all States and UT and Registrar General of all High Courts for ensuring compliance therewith — Police — Arrest — Penal Code, 1860 — S. 498-A — Constitution of India, Arts. 21 and 22(2)

10. We are of the opinion that if the provisions of [Section 41, Cr.PC](#) which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in [Section 41 Cr.PC](#) for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

11.1 All the State Governments to instruct its police officers not to automatically arrest when a case under [Section 498-A](#) of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from [Section 41, Cr.PC](#);

11.2 All police officers be provided with a check list containing specified sub- clauses under [Section 41\(1\)\(b\) \(ii\)](#);

11.3 The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4 The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5 The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

11.6 Notice of appearance in terms of [Section 41A](#) of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

11.7 Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

11.8 Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under [Section 498-A](#) of the I.P.C. or [Section 4](#) of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

13. We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union

Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance.”

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 No. 11191034220261 of 2022 registered with Naranpura Police Station, Ahmedabad, 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 the applicant:

- (a) shall cooperate with the investigation and make available for interrogation whenever required;
- (b) shall remain present at the concerned Police Station on **1.12.2022** 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;

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 is made absolute.

Direct service is permitted.

SURESH SOLANKI

(HEMANT M. PRACHCHAK,J)