

# Sarmanbhai Devshibhai Barad vs State Of Gujarat on 16 April, 2019

**Author: Vipul M. Pancholi**

**Bench: Vipul M. Pancholi**

R/CR.MA/7264/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 7264 of 2019

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SARMANBHAI DEVSHIBHAI BARAD

Versus

STATE OF GUJARAT

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Appearance:

MR SANDEEP R LIMBANI(5977) for the Applicant(s) No. 1,2,3

MR LB DABHI, ADDITIONAL PUBLIC PROSECUTOR(2) for the

Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

Date : 16/04/2019

ORAL ORDER

1. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicants accused have prayed for anticipatory bail in connection with the FIR being C.R. No.I□22 of 2019 registered with Sutrapada Police Station, District Gir□Somnath, for offence under Sections 379, 465, 467, 468, 471 and 120B of the Indian Penal Code, Sections 4(1)A and 21 of the Gujarat Mines and Minerals (Regulation and Development) Act, 1957 and Sections 3, 5, 6 and 13 of the Gujarat Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2005, 2016, 2017.

2. Learned advocate for the applicants submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. He further submits that the applicants will keep themselves available during the course of investigation, trial also and will R/CR.MA/7264/2019 ORDER not flee from justice.

3. Learned advocate for the applicants on instructions states that the applicants are 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 their remand. He further submits that upon filing of such application by the Investigating Agency, the right of applicants

accused to oppose such application on merits may be kept open. Learned advocate, therefore, submitted that considering the above facts, the applicants may be granted anticipatory bail.

4. 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.

5. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offence, role attributed to the accused, without discussing the evidence in detail, at this stage, this Court is inclined to grant anticipatory bail to the applicants.

6. This Court has also considered the following aspects:

(a) the applicants are the owners of the trucks. The applicants were not found at the place of incident; and R/CR.MA/7264/2019 ORDER

(b) looking to the allegations levelled against the applicants, this Court is inclined to exercise discretion in their favour.

7. 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 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab, as reported at (1980) 2 SCC 565.

8. In the result, the present application is allowed. The applicants are ordered to be released on bail in the event of their arrest in connection with a FIR being C.R. No.I□22 of 2019 registered with Sutrapada Police Station, District Gir□Somnath, on their executing a personal bond of Rs.10,000/□ (Rupees Ten Thousand Only) each with one surety of like amount on the following conditions:

(a) shall cooperate with the investigation and make themselves available for interrogation whenever required;

(b) shall remain present at concerned Police Station on 26.04.2019 between 11.00 a.m. and 2.00 p.m.;

(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;

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(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 their residence till the final disposal of the case till further orders;

(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 it on merits;

9. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicants. The applicants 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 R/CR.MA/7264/2019 ORDER applicants, 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.

10. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

11. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(VIPUL M. PANCHOLI, J) piyush