

Shahnawaz Mohammad Rafik Chhannu vs State Of Gujarat on 21 April, 2025

R/CR.MA/6945/2025

ORDER DATED: 21

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 6945
of 2025

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SHAHNAWAZ MOHAMMAD RAFIK CHHANNU & ORS.

Versus

STATE OF GUJARAT

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Appearance:

SAHIL Y PATEL(8985) for the Applicant(s) No. 1,2,3

TAHIR M KHAN(8984) for the Applicant(s) No. 1,2,3

MR P P MAJMUDAR(5284) for the Respondent(s) No. 1

MUKUNDKUMAR A THAKKAR(9034) for the Respondent(s) No. 1

MR HK PATEL, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 21/04/2025

ORAL ORDER

[1.0] By way of the present application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS"), the applicants - accused have prayed to release them on anticipatory bail in the event of their arrest in connection with the FIR being C.R. No.I-11210055250288/ 2025 registered with Salabatpura Police Station, Surat for the offences punishable under Sections 308(2), 308(5) and 3(5) of the BNS.

[2.0] Learned advocate for the applicants submits that the applicants have nothing to do with the offence and they are falsely implicated in the offence. The present applicants are real brothers. It is submitted that the complainant intended to illegally construct a 6th floor on his building. In response, the applicants approached the Surat Municipal Corporation. Pursuant NEUTRAL CITATION R/CR.MA/6945/2025 ORDER DATED: 21/04/2025 undefined to this approach and the filing of an RTI application, the illegal 6 th floor construction of the complainant was demolished. Subsequently, the complainant rebuilt the 6th floor, which was again demolished. It is alleged that

the applicants demanded one flat in the building. However, upon negotiation, they agreed to accept Rs. 6,00,000/-. The complainant paid Rs. 3,00,000/- to the applicants, but the applicants allegedly told him that until the full amount of Rs. 6,00,000/- was paid, they would not allow him to continue construction, claiming that they had extorted the money. A complaint has been filed in this regard. No antecedents have been reported against the applicants. Furthermore, no recovery or discovery is required from the accused, and the complaint appears to have been filed with an ulterior motive, given the four-month delay in filing it. It is submitted that, prima facie, no offence is made out, even if the allegations of attempted extortion are accepted. Therefore, custodial interrogation at this stage is not necessary. Applicants do not have any past antecedents. In view of the above, the applicants may be granted anticipatory bail.

[3.0] Learned advocate for the original Complainant has filed an affidavit, which is annexed at page 35 of the compilation.

[3.1.] Learned APP and learned advocate for the original Complainant have opposed the application on the ground that the present applicants are having similar nature of modus and they used to extort the money in the same area and similar nature of complaint is registered against them. In the pretext of NEUTRAL CITATION R/CR.MA/6945/2025 ORDER DATED: 21/04/2025 undefined RTI application, they are unauthorizedly demanding the money to put under the fear to the people. If they released on bail, then possibility cannot be ruled out to breach of public tranquility and to indulge in similar type of activity. Hence, he has requested to dismiss the present application as investigation is at primary stage and custodial interrogation is also required.

[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) the nature and gravity of the accusation; (ii) the antecedents of the applicants including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence; (iii) the possibility of the applicants to flee from justice; and (iv) where the accusation has been made with the object of injuring or humiliating the applicants by having him so arrested. 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:

(i) No antecedent is reported against the applicants;

(ii) complaint is filed belatedly. The alleged incident took place in the month November, 2024 to January, 2025, but the NEUTRAL CITATION R/CR.MA/6945/2025 ORDER DATED: 21/04/2025 undefined complaint is filed in the month of March, 2025.

(iii) The allegations against the present applicant is that the complainant has erected the illegal constructions and in this regard, notice came to be issued by the Surat

Municipal Corporation and the said illegal constructions was demolished by the Municipality and in the pretext of RTI application, to continue in the illegal activity and applicants have made an amount of Rs.6,00,000/- and Rs.3,00,000/- was given to them. In this regard, complaint is filed.

(iv) Nothing is required to be recovered and discovered from the accused;

(v) It is an admitted fact that the the construction was illegal and the same was demolished by the Surat Municipal Corporation and the complainant has filed similar nature of complaint against the accused;

[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.

NEUTRAL CITATION R/CR.MA/6945/2025 ORDER DATED: 21/04/2025 undefined [6.0] In the result, the present application is allowed by directing that in the event of arrest / appearance of the applicants in connection with the FIR being C.R. No.I-11210055250288/ 2025 registered with Salabatpura Police Station, Surat, the applicants shall be released on bail on furnishing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) each with one surety of like amount on the following conditions that applicants :

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

(b) shall remain present at the concerned Police Station on 28/04/2025 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 applicants;

(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 their 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;

(g) an order of anticipatory bail does not in any manner NEUTRAL CITATION R/CR.MA/6945/2025 ORDER DATED: 21/04/2025 undefined limit or restrict the rights or duties of the police or investigative agency, to investigate into the charges against the person who seeks and is granted pre-

arrest bail;

(h) It is open to the police or the investigating agency to move the learned trial Court for a direction under Section 483(2) to arrest the accused, in the event of violation of any term, such as absconding, non- cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.-

(i) shall not contact directly or indirectly with the victim or any other witnesses;

[7.0] At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the applicants on bail.

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

(HASMUKH D. SUTHAR,J) KUMAR ALOK