

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 2504
of 2024****With****R/CRIMINAL MISC.APPLICATION NO. 2550 of 2024**

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PATHAN MOHAMMED KHALIK ILIYAS

Versus

STATE OF GUJARAT

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Appearance:

MR ARPIT A KAPADIA(3974) for the Applicant(s) No. 1

MR CHIRAG H PAREKH(5249) for the Respondent(s) No. 1

MR HK PATEL, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**Date : 05/03/2024****ORAL ORDER**

1. By way of the present petitions under Section 438 of the Code of Criminal Procedure, 1973, the petitioners have prayed to release them on anticipatory bail in case of arrest in connection with the FIR registered as C.R.No.11196012240014 registered with Fatehgunj Police Station.

2. Heard Mr. Arpit Kapadia, learned advocate for the petitioners, learned advocate Mr. Chirag Parekh for the first informant and learned APP.

3. Learned advocate for the petitioners would submit that the petitioners were not present at the spot of incident and were 40 km away from the spot of the incident, which could be visible from the photographs at page 42. He would further submit that

the petitioners have not played any active or passive role in commission of the alleged offence. He would further submit that the person accompanying the petitioners at a particular place was also visible in the photos at page 42 of the compilation and that person has also filed affidavit that the petitioners were with him on the day of the incident. Upon such submissions, he submits to allow this petition.

4. On the other hand, learned advocate for the first informant would submit that the petitioners are habitual offender and are indulged in the unlawful activities time and again subsequent to the present offence. He would further submit that one another FIR was filed being No.11207050240030 with Pavagadh Police Station by Mohit Alam Pathan on 7.1.2024 against the petitioners for the offences punishable u/s 323, 504, 506(2), 114 of the IPC. Upon such aspect, he would submit that the petitioners are regularly doing identical offence. He would further submit that the maximum punishment, which can be entailed in the present offence, is life. Upon such submissions, he submits to dismiss this petition.

5. Learned APP, having adopted arguments of learned advocate for the first informant, would submit that the report of Fatehganj Police Station reveals that all four accused are identified. He would further submit that the persons who have received injury have in their statement clearly mentioned the name of the petitioners as assailants and that the petitioners have given iron blow on their head and caused serious injuries. Upon such submission, he submits to dismiss the petition.

6 Having heard learned advocates for the parties, let first deal with the submission of learned advocate for the petitioner about the absence of the petitioners at the spot of the incident and for which, learned advocate for the petitioner relied upon photographs at Exh.42. This submission could be treated as alibi and it cannot be taken into consideration while deciding bail application. Moreover, the photographs at page 42 of the compilation is taken through CCTV footage and without investigation, it cannot be justified that the petitioners were not present at the scene of offence. Even from the statements of the injured, it appears that the petitioners have given blow on the vital part of the body and thus, there is serious offence and in that circumstances, the custodial interrogation of the petitioners is required.

7. In case of **Pratibha Manchanda and another Vs. State of Haryana and another reported in (2023) 8 SCC 181**, the Hon'ble Apex Court in para 21, observed as under:-

"21. 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."

8. Keeping in mind the law laid down by the Hon'ble Supreme Court in the case of (i) **State Rep. by the CBI V/s Anil Sharma reported in 1997 (7) SCC 187**, (ii) **Adri Dharan Das V/s State of**

W.B. reported in 2005 (4) SCC 303 (iii) P. Chidambaram V/s Directorate of Enforcement reported in AIR 2019 SC 4198, wherein the Hon'ble Supreme Court has held as follows:

"The legislative intent behind the introduction of Section 438 CrPC is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights – safeguarding the personal liberty of an individual and the societal interest.

Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. It may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In this view, it cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant/applicant under Article 21 of the Constitution of India.

Consequently, power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Section 438 CrPC is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. Anticipatory bail is to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy".

Having regard to nature of allegations and stage of investigations, held investigating agency must be given sufficient freedom in process of investigation. Appellant not entitled to anticipatory bail as the same would hamper the investigation".

9. In the result, the petition fails and stands dismissed

SHEKHAR P. BARVE

(J. C. DOSHI,J)