

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 3582
of 2024**

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HIMALAY YOGESHBHAI WAGHELA

Versus

STATE OF GUJARAT

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Appearance:

MR. HARDEEP L MAHIDA(7112) for the Applicant(s) No. 1

T J WAGHELA(7501) for the Applicant(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 : 22/02/2024****ORAL ORDER**

1. By way of the present petition under Section 438 of the Code of Criminal Procedure, 1973, the petitioner has prayed to release him on anticipatory bail in case of his arrest in connection with the FIR registered as **C.R.No.11208044240047** registered with **Pradyumnagar Police Station**.

2. Learned advocate for the petitioner submits that considering the nature of allegations, role attributed to the petitioner, the petitioner may be enlarged on anticipatory bail by imposing suitable conditions.

3. 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.

4. Heard the learned Advocates for the respective parties and

perused the papers.

5. 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) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. 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.

(1) The case is otherwise for offence punishable u/s 504 of the IPC and none of the offences have maximum punishment of more than seven years. Thus, in that circumstances, guidelines issued in the case of Arnesh Kumar v/s. State of Bihar [(2003 (8) SCC 273] reiterated in the case of Md. Asfak Alam Vs. The State of Jharkhand and another reported in 2023 INSC 660 and pursuant to which, Circular No.C.2703/81 issued by this Court

shall be followed.

- (2) Maximum punishment, which can be entailed in the present offence, is less than seven years.
- (3) The petitioner was not named in the FIR.
- (4) The petitioner is not present at the place of incident nor has given any injury to the complainant.
- (5) There is no flight risk as the petitioner is residing at Rajkot and doing study.
- (6) Learned advocate for the petitioner assures the Court that the applicant will be cooperative with the investigation, as and when presence of the applicant is required.

6. Having heard the learned counsel for the parties and perusing the record of the case and taking into consideration the facts of the case, nature of allegations, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to exercise discretion in favour of the petitioner.

7. This Court while exercising discretion in favour of the petitioner has taken into consideration law laid down by the Apex Court in the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors.** [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitutional Bench in the case of **Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab** (1980) 2 SCC 665. This Court has also taken into consideration law laid down in the case of **Sushila Agarwal v/s. State (NCT of Delhi)** [(2020) 5 SCC 1].

8. In the result, the present petition is allowed by directing

that in the event of applicant herein being arrested pursuant to FIR registered as **C.R.No.11208044240047** registered with **Pradyumannagar Police Station**, the petitioner shall be released on bail on furnishing a personal bond of Rs. 10,000/- (Rupees Ten Thousand only) with one surety of like amount on the following conditions that the petitioner :

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) shall remain present at concerned Police Station on 15.3.2024 and 16.3.2024 between 10.00 a.m. and 4.00 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;
- (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 residence till the final disposal of the case till further orders;
- (f) shall not leave India without the permission of the concerned trial court and if having passport shall deposit the same before the concerned trial court within a week;

9. If breach of any of the above conditions is committed by the petitioner, the concerned learned Judge will be free to take appropriate action in the matter. It will be open for the concerned Court to delete, modify and/or relax any of the above

conditions in accordance with law. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the petitioner on bail.

Direct service is permitted.

SHEKHAR P. BARVE

(J. C. DOSHI,J)