

Criminal Misc. Application (For Anticipatory Bail) No. 26051 of 2017

Sureshbhai Maheshbhai v. State of Gujarat

2018 SCC OnLine Guj 200

In the High Court of Gujarat at Ahmedabad

(BEFORE J.B. PARDIWALA, J.)

Sureshbhai Maheshbhai @ Biharilal Mali & 5 Applicant(s)

v.

State of Gujarat Respondent(s)

Criminal Misc. Application (For Anticipatory Bail) No. 26051 of 2017

Decided on February 8, 2018

Appearance:

Mr. IH Syed, Advocate with Mr. Tushar Chaudhary, Advocate for the Applicant(s)
No. 1 - 6

Mr. Hriday Buch, Advocate with Mr. VR Halani, Advocate for the Respondent(s) No.
1

Ms. Moxa Thakkar, APP for the Respondent(s) No. 1

ORAL ORDER

J.B. PARDIWALA, J.:— By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicants - original accused persons have prayed to release them on anticipatory bail in the event of their arrest in connection with the First Information Report being **I-69 of 2017 registered with the Deesa North Police Station, District: Banaskantha** of the offence punishable under Sections 498A, 406, 323 and 328 read with 114 of the Indian Penal Code and Sections 3 and 7 of the Dowry Prohibition Act.

2. The learned advocate appearing on behalf of the applicants would submit that considering the nature of the offence, the applicants may be enlarged on anticipatory bail by imposing suitable conditions.

3. On the other hand, the learned A.P.P. appearing on behalf of the respondent-State has opposed this application for grant of anticipatory bail to the applicants looking to the nature and gravity of the offence.

4. The following aspects are taken into consideration:

[1] The most important aspect is the order passed by this Court dated 1st February 2018 in the Special Criminal Application No. 472 of 2018, which reads as under:

"1. *By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:*

8(a) Your Lordships may be pleased to admit and allow this petition.

(b) Your Lordships may be pleased to issue writ of mandamus or any other appropriate writ, order or direction transferring the investigation of First Information Report being C.R. No. I-69/2017 registered with Deesa North Police Station to the Deputy Superintendent of Police, Banaskantha and/or to any other independent agency and thereby further be pleased to direct the said agency to carry out proper investigation.

(c) Your Lordships may be pleased to issue writ of mandamus or any other appropriate writ, order or direction ordering the investigation of the First Information Report being C.R. No. I-69/2017 registered with Deesa

North Police Station under the supervision of the respondent no. 2 - District Superintendent of Police, Banaskantha.

(d) Pending admission, final hearing and disposal of this petition, Your Lordships may be pleased to direct the respondent no. 3 herein to submit detailed report of the investigation carried out so far in connection with First Information Report being C.R. No. I-69/2017 registered with Deesa North Police Station.

(e) Your Lordships may be pleased to pass any other and further orders as may be deemed fit and proper.

- 2. The writ applicant got married with one Kavtaben Mali on 15th February 2015. Soon after the marriage, matrimonial disputes cropped up between the parties, which, ultimately, led to the filing of the First Information Report referred to above. The First Information Report is filed for the offence punishable under Sections 498A, 406, 323 and 328 read with 114 of the Indian Penal Code and Sections 3 and 7 of the Dowry Prohibition Act.*
- 3. I take notice of the fact that for the incident, which occurred on 3rd September 2017, the F.I.R. came to be lodged on 30th September 2017 i.e. almost after a period of twenty seven days. The allegations in the F.I.R. are that on the date of the incident, all the accused persons together tried to forcibly administer something spurious to the first informant. The case of the applicant herein is that the F.I.R. is palpably false and nothing of the sort, as alleged, occurred on 3rd September 2017.*
- 4. The principal argument of the learned counsel appearing for the writ applicant is that on 3rd September 2017, he was at Gandhinagar for the purpose of appearing in the examination for recruitment on the post of the 'Municipal Accountant, Class III' conducted by the Subordinate Services Selection Board.*
- 5. I requested Ms. Moxa Thakkar, the learned A.P.P. appearing for the State to look into the matter in this direction so that the picture would be clear.*
- 6. The Investigating Officer is present in the Court today. He confirms that on 3rd September 2017, when the incident, as alleged, is said to have occurred, the applicant was not in the village, but, was actually at Gandhinagar. It is confirmed, after thorough investigation that, the applicant appeared in two papers, and therefore, in any circumstances, he could not have been present in the village at the time when the alleged incident is said to have occurred. If that be so, then it is apparent that the allegations levelled in the F.I.R. are false.*
- 7. The applicant is praying for transfer of the investigation, because, according to him, his other family members i.e. his parents, etc., have also been falsely involved in the alleged offence. There may be some matrimonial disputes, but, prima facie, it appears that the respondent No. 2 has levelled false allegations.*
- 8. I am of the view that the matter should be looked into by the Deputy Superintendent of Police, District: Banaskantha. The Deputy Superintendent of Police, Banaskantha shall see to it that the investigation proceeds in the right direction. As it is confirmed that the applicant was not present at the time when the alleged incident is said to have occurred, it is necessary to investigate whether in fact any such incident occurred or not. Let such investigation to be carried out under the supervision of the Deputy Superintendent of Police, Banaskantha.*
- 9. With the above, this writ application is disposed of Direct service is permitted."*

[2] The case put up by the first informant appears to be very permitted."

[3] The investigation may proceed further in accordance with law. However, in my view, a strong case is made out for grant of anticipatory bail, more particularly, in view of what has been observed by this Court in the order referred to above.

5. I have heard the learned advocates appearing for the respective parties, perused the investigation papers and have also taken into consideration the facts of the case, nature of the allegations, role attributed to the applicants-accused, and without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicant.

6. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of *Siddharam Satlingappa Mhetre v. State of Maharashtra*, reported in (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*, reported in (1980) 2 SCC 665.

7. The learned advocate for the applicant, on instructions, states that the applicants are ready and willing to abide by all the conditions, including impositions of conditions with regard to the powers of the 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 the applicants-accused to oppose such application on merits may be kept open.

8. In the result, the present application is allowed by directing that in the event of arrest of the applicants herein in connection with the First Information Report being **I-69 of 2017 registered with the Deesa North Police Station, District: Banaskant** shall be released on bail on their furnishing a personal bond of Rs. 10,000/- (Rupees ten thousand only) each with one surety of the like amount on the following conditions that they shall:

- (a) cooperate with the investigation and make themselves available for interrogation whenever required;
- (b) remain present at the concerned Police Station on **12th February 2018** between 11.00 a.m. and 2.00 p.m.;
- (c) not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/them from disclosing such facts to the court or to any police officer;
- (d) 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) at the time of execution of bond, furnish the address to the Investigating Officer and the Court concerned and shall not change his residence till the final disposal of the case till further orders;
- (f) not leave India without the permission of the 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 just and proper and the learned Magistrate would decide the same 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 rights of the accused to seek stay against an order of remand if, ultimately, granted, and the powers of the learned Magistrate to consider such a request in accordance with law.

10. It is clarified that the applicants, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to the other conditions of this anticipatory bail order.

11. 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. Rule is made absolute. Direct service is permitted.

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