



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 17234 of 2022

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CHETANBHAI VAGHJIBHAI SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR PR ABICHANDANI(102) for the Applicant(s) No. 1

MR RONAK RAVAL ADDITIONAL PUBLIC PROSECUTOR for the Respondent(s)

No. 1

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 19/09/2022

ORAL ORDER

1. Heard learned Advocate Mr. P. R. Abichandani on behalf of the applicant and learned Additional Public Prosecutor Mr. Ronak Raval on behalf of the respondent-State.
2. Rule. Learned APP waives service of rule on behalf of the respondent-State.
3. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant – original accused prays for being released on anticipatory bail in connection with **FIR being I- C.R. No. 11191014220256 of 2022** registered with **Elisbridge Police Station, Ahmedabad** on 05.09.2022 for offences punishable under Sections 406, 420 and 114 of the Indian Penal Code read with Sections 66(C), 66(D) of the Information and Technology Act read with Section 23(E), 23(AF), 23(G) and 23(H) of the Securities Contracts (Regulation) Act.



4. Learned Advocate Mr. Abichandani for the applicant submits that the nature of allegations are such for which custodial interrogation at this stage may not be necessary. Besides, the applicant is available during the course of investigation and will not flee from justice. In view of the above, the applicant may be granted anticipatory bail.

Learned Advocate for the applicant on instructions states that the applicant is 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 his remand. He would further submit that upon filing of such application by the Investigating Agency, the right of applicant-accused to oppose such application on merits may be kept open.

5. Learned APP has vehemently opposed the application and has submitted that looking to the nature of the allegation and role attributed to the applicant, this Court may not grant any indulgence. Learned Additional Public Prosecutor would further submit that while there may be a bar under the Act, more particularly with regard to taking up cognizance but at the same time, in view of the diverse view taken by this Court, as regards the permissibility of an investigation to be carried out, at this stage no indulgence may be granted.

6. Having heard the learned Advocates for the parties, following aspects are considered by this Court:

[1] That the fact of the present applicant being arraigned as an accused only on the basis of statement of a co-accused.

[2] It also appears that the present applicant is a registered sub-



broker.

[3] It further appears that a learned Co-ordinate Bench of this Court (Hon'ble Mr. Justice J.B. Pardiwala as he then was) vide order dated 15.03.2018 in Special Criminal Application No. 1781 of 2018 having inter alia taken a view that in view of bar of Section 26 though the police may have power to investigate an offence but the Court will not be able to take cognizance and whereas in the considered opinion of this Court, while this Court would not comment as regards the permissibility of the investigation but at the same time on basis of a complaint, on which ultimately it may not be possible for the Court concerned to take cognizance, the present applicant in the considered opinion of this Court may not be required to undergo the rigmarole of custodial interrogation more particularly considering the very limited role attributed to the present applicant.

[4] That the FIR not making out any prima facie case against the present applicant for offences punishable under Section 406 and 420 of the Indian Penal Code.

[5] That fact that the present applicant has no antecedent of being involved in any criminal activity hereinbefore.

7. Having regard to the circumstances in question, and considering the law laid down by the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.** reported in (2011)1 SCC 694, this Court is inclined to consider this application.



8. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to **FIR being I- C.R. No. 11191014220256 of 2022** registered with **Elisbridge Police Station, Ahmedabad** the applicant shall be released on bail on furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety of like amount, on the following conditions:

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) shall remain present at the concerned Police Station on **26.09.2022** 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;
- (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 his residence till the final disposal of the case or till further orders;
- (f) shall not leave India without the permission of the Court and, if having passports shall surrender the same before the Trial Court within a week.



9. Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicant to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. The applicant 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 applicant, 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 while enlarging the applicant on bail. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(NIKHIL S. KARIEL,J)

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