

ABC 2020 (I) 74 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(A.Y. Kogje, J.)

Criminal Misc Application No 19091 of 2019

Decided on 22 November, 2019

SHANTILAL MANGALJIBHAI PUNGERA - Applicant(s).

Versus

STATE OF GUJARAT - Respondent(s).

Law Covered:- Code of Criminal Procedure, 1973 – Section 438 – Gujarat Prohibition Act, 1949 – Sections 65(a)(e), 81, 98(2)& 116-B – Anticipatory Bail – Previous enmity with the informant – the applicant had filed complaint against the informant in a previous offence of gambling – Submission absence of any evidence to except the statement of the co-accused – No previous antecedents with regards to prohibition activity – Call Detail Records – the applicant had contacted one of the co-accused residing locally only once and that too in proximity to the date of offence – Ground of parity. (Para 4)

Held:- 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 allegations, role attributed to the applicant- accused. Without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicant. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of *Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others*, reported at [2011] 1 SCC 6941, wherein the Hon'ble Apex Court has reiterated the law laid down by the Constitutional Bench in the case of *Shri Gurubaksh Singh Sibbia and others*, reported at (1980) 2 SCC 665.

Following aspects are also considered:-

I) The First Information Report is registered on 11.09.2019 for the offence which is alleged to have taken place on 11.09.2019.

II) Considering the submission of learned advocate for the applicant that the applicant has been falsely roped into the offence as the applicant had filed complaint in the Court of Magistrate against the informant of the present C.R. In the

a previous offence of gambling, the applicant was mercilessly beaten and therefore, the applicant had to filed complaint against the police officers who are involved in beating him including the informant.

b III) The submission of learned advocate for the applicant is that there is no evidence to connect the applicant except for the statement of the co-accused and that the applicant has no other antecedents with regards to prohibition activity. Pursuant to order dated 25.10.2019 alongwith the investigation case papers, Call Detail Records are produced which indicate that the applicant had contacted one of the co-accused residing locally only once and that too in proximity to the date of offence.

d IV) The co-accused, who are family members, have been enlarged on anticipatory bail and hence by applying the principle of parity.

V) Learned Additional Public Prosecutor under the instructions of the Investigating Officer is unable to bring on record any special circumstances against the applicant.(Para-4)

e **Counsel:-** For Applicant(s): Mr Chintan S Papat, Adv.
For Respondent(s): Mr.J.K.Shah, Adv.

Cases Referred:-

- f 1. *Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others*, [2011] 1 SCC 6941, (Para-4)
2. *Shri Gurubaksh Singh Sibbia and others*, (1980) 2 SCC 665, (Para-4)

ORDER

g A.Y. KOGJE, J.: - 1. This application is filed by the applicant under Section 438 of the Code of Criminal Procedure, 1973 for anticipatory bail in the event of his arrest in connection with FIR registered at **C.R. No.III-255 of 2019 with Chorwad Police Station, Junagadh** for the offence punishable under Sections 65(a)(e), 116-B, 81 and 98(2) of the Gujarat Prohibition Act.

h 2. Learned Advocate appearing on behalf of the applicant would submit that considering the nature of offence, the applicant may be enlarged on anticipatory bail by imposing suitable conditions.

3. On the other hand, the learned Additional Public Prosecutor appearing for the respondent-State has opposed this application and

granting anticipatory bail to the applicant looking to the nature and gravity of the offence.

4. 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 allegations, role attributed to the applicant- accused. Without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicant. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of *Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others*, reported at [2011] 1 SCC 6941, wherein the Hon'ble Apex Court has reiterated the law laid down by the Constitutional Bench in the case of *Shri Gurubaksh Singh Sibbia and others*, reported at (1980) 2 SCC 665.

Following aspects are also considered:-

I) The First Information Report is registered on 11.09.2019 for the offence which is alleged to have taken place on 11.09.2019.

II) Considering the submission of learned advocate for the applicant that the applicant has been falsely roped into the offence as the applicant had filed complaint in the Court of Magistrate against the informant of the present C.R. In the previous offence of gambling, the applicant was mercilessly beaten and therefore, the applicant had to file complaint against the police officers who are involved in beating him including the informant.

III) The submission of learned advocate for the applicant is that there is no evidence to connect the applicant except for the statement of the co-accused and that the applicant has no other antecedents with regards to prohibition activity. Pursuant to order dated 25.10.2019 alongwith the investigation case papers, Call Detail Records are produced which indicate that the applicant had contacted one of the co-accused residing locally only once and that too in proximity to the date of offence.

IV) The co-accused, who are family members, have been enlarged on anticipatory bail and hence by applying the principle of parity.

V) Learned Additional Public Prosecutor under the instructions of the Investigating Officer is unable to bring on record any special circumstances against the applicant.

5. Learned Advocate for the applicant on instructions states
a that the applicant is ready and willing to abide by all the conditions,
including imposition of conditions with regard to the 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 the applicant-
b accused to oppose such application on merits may be kept open.

6. In the result, the present application is allowed by
directing that in the event of arrest of the applicant herein in
connection with FIR registered as **C.R. No.III-255 of 2019 with**
c **Chorwad Police Station, Junagadh** the applicant shall be released
on bail on his furnishing a personal bond of Rs.10,000/- (Rupees ten
thousands only) with one surety of the like amount on the following
conditions that he :

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

(b) shall remain present at the concerned Police Station
on **28.11.2018** between 11.00 AM and 02.00 PM;

e (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;

f (d) shall not obstruct or hamper the police
investigation and shall not to play mischief with the evidence
collected or yet to be collected by the police;

g (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 till further orders without the permission of Trial Court;

(f) To mark presence once in fifteen days before the
concerned Police Station till filing of the charge-sheet

h (g) shall not leave India without the permission of the
Trial Court and if having passport, shall deposit the same
before the Trial Court within a week; and

(h) it would be open to the Investigating Officer to file
an application for remand if he considers it proper and just
and the learned Magistrate would decide the same on merits;

(I) not to enter Taluka Maliya Hatina for a period of six months except for marking presence and attending the trial.

7. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for Police remand of the applicant. 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.

8. 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. The application is allowed accordingly. Rule is made absolute in the aforesaid terms. Direct service is permitted.

Result:- Anticipatory bail granted.