

Bholabhai Bhalubhai Bharvad Vs State Of Gujarat

Court: Gujarat High Court

Date of Decision: Aug. 28, 2019

Acts Referred: Code Of Criminal Procedure 1973 " Section 438

Indian Penal Code, 1860 " Section 114, 120(B), 406, 420, 467, 468

Prize Chits And Money Circulation Schemes (Banning) Act, 1978 " Section 4, 5, 6

Gujarat Protection Of Interest Of Depositors (In Financial Establishments) Act, 2003 " Section 3, 7

Hon'ble Judges: A.J. Desai, J

Bench: Single Bench

Advocate: Uvesh Altaf A. Malik, Krina Calla

Final Decision: Allowed

Judgement

A.J. Desai, J

1. Heard learned advocates appearing for the respective parties.

2. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant-original accused has prayed to release

him on anticipatory bail in case of his arrest in connection with the FIR being CR. No. I- 1 of 2016 registered with Vadodara Zone Police Station,

Vadodara, for the offences punishable under Sections 406, 420, 467, 468, 120(B), 114 etc. of the Indian Penal Code and Sections 4, 5, 6, etc. of The

Prize Chits & Money Circulation Schemes (Banning) Act, 1978 and under sections 3, 7, etc. of The Gujarat Protection of Interest of Depositors (In

Financial Establishments) Act, 2003, etc..

3. Learned advocate for the applicant submits that the nature of allegations are such for which custodial interrogation at this stage is not 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.

4. 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 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.

6. I have considered the allegations leveled against the present applicant in the FIR and perused the papers of investigation and considered the role

played by the applicant and the offence is of the year 2016 and charge-sheet is filed qua other accused.

7. 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 and punishment prescribed for the alleged offences, 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 v. State of Maharashtra reported in (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, reported in (1980) 2 SCC 565.

8. Learned counsel for the parties do not press for further reasoned order.

9. In the result the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR being C.R. No. I-1 of

2016 registered with Vadodara Zone Police Station, the applicant shall be released on bail on furnishing a personal bond of Rs. 25,000/- (Rupees

Twenty Five Thousands only) with one local 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 04/09/2019 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.

10. 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.

11. 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.

12. Direct service is permitted.