



Received on
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Duration Ys. Ms. Ds.

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, SURAT.

Cri. Misc. (Anticipatory) Bail Application No.4649 of 2019.

Exh. ____

APPLICANT: Mohamad Bilal Gulamrasul Kagzi

ACCUSED Aged about 37 years,
Occupation : Advocate,
Residing Behind Government Hospital,
Kosamba,
Tal. Mangrol,
Dist. Surat.

V E R S U S

OPPONENT: The State of Gujarat.

APPEARANCE :

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Learned Counsel Mr. D. C. Kokas for the applicant/ accused.

Learned A.P.P. Mr. K. V. Revaliya for the opponent – State.

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-: J U D G M E N T :-

- (1) Read the application. Heard L.A. Mr. D. C. Kokas for the applicant and Ld. A.P.P. Mr. K. V. Revaliya for the opponent i.e. State.
- (2) The present bail application has been preferred by the applicant apprehending his arrest, to get anticipatory bail U/s. 438 of the Code of Criminal Procedure, in connection with the offence registered at Kosamba Police Station vide I-C.R. No.136/2019 for the offence punishable U/s. 143, 144, 148, 149, 307, 323, 324, 325, 427, 120(b), 504 and 506(2) of I.P.C.
- (3) As per the case of prosecution, the complainant has filed complaint on 12/08/2019 for the offence which occurred on 12/08/2019 at 08.30 hours, stating that, the present applicant and other accused constituted criminal conspiracy and by making unlawful assembly, assaulted complainant and witness with iron pipe, wherein, the complainant and witness sustained grievous injuries. As such, complaint was filed by the complainant before the Kosamba Police Station.
- (4) On behalf of the applicant/accused, L.A. Mr. D. C. Kokas has submitted that, the complaint has been filed after span of 12 hours and no satisfactory explanation is given for such delay. The present applicant was not present at the place of offence, but due to festival of Bakri-Id, he was present at his home, and hence, no offence is made out against present applicant. Present applicant is an Advocate and he was engaged by accused party, hence, he is falsely implicated in the offence. Present applicant has not assaulted the injured, nor carried out any weapon at the time of offence. There is nothing on record that due to the injuries sustained by the injured, they are in dangerous condition and are

admitted in hospital. It is also submitted that, the present applicant was talking on mobile with other accused who are his clients and only to pressurize him, false complaint is filed after span of time. The applicant/accused is permanently residing at Kosamba along with his family and hence, he will never flee away from the justice and he will be easily available for trial. Hence it is prayed to release the applicant/ accused on anticipatory bail.

- (5) On behalf of the opponent-State, learned A.P.P. Mr. K. V. Revaliya has submitted that, the name of the present applicant/accused is shown in the complaint and in the statement of witnesses, and the investigation towards present applicant/accused is pending. At the time of incident, the applicant was not present at his home. Prior to the incident, an offence of threat to witnesses is active and there is ample material on record against the present applicant, and so, considering seriousness and gravity of the offence, merely because the applicant is Advocate of the opposite party, it is not sufficient to allow application. There is no reason to allow the application of applicant/accused. Hence it is prayed to reject the application of applicant.
- (6) I.O. has filed affidavit at Exh.4 wherein it has been submitted that if the applicant/accused is released on bail, he would indulge in the same offence again, as such, it is prayed to reject the bail application.
- (7) The Hon'ble Supreme Court has, in the case of **ARNESHKUMAR V/S. STATE OF BIHAR & ANR., Criminal Appeal No. 1277/2014**, laid down that "*Police Officers do not arrest accused unnecessarily and Magistrate do not authorize detention casually and mechanically. The Hon'ble Supreme Court also given direction to ensure observe above.*

In **Siddharam Satlingappa Mhetre V/s. State of Maharashtra & Ors, reported in 2011 SAR (Criminal) 118**, the Hon'ble Supreme Court has laid down that *"Exercise of judicial discretion – Powers to release on anticipatory bail – Are discretionary must be exercised on the basis of the available material and the facts of the particular case – In case where the court is of the considered view that accused has joined investigation and is not likely to abscond – Custodial interrogation should be avoided"*.

- (9) While deciding the bail application, the factors of seriousness and gravity of the offence, involvement of the accused, role attributed towards accused, availability of the accused in the trial and possibility of the tampering with witness, are to be seen.
- (10) Now keeping in mind above principle of law and considering facts and circumstances of the case, the complainant and witness who sustained injury in the incident were admitted in hospital and they are discharged from the Hospital and are out of danger, and considering the nature of the injury, the injured are already out of danger. No any recovery is necessary from the present applicant/accused. Whether the applicant/accused is involved in the alleged offence is a question which can be decided at the time of trial, not at this juncture. Moreover, apprehension of indulging in the same activity cannot become a ground to reject the application of the applicant/accused. The applicant/accused is not a habitual offender nor has been convicted earlier in same type of offence. As such, apprehension shown by the I.O. and complainant to reject the application is not palatable at this stage. There is no allegation of assault with any weapon against present applicant/accused. Considering facts and circumstances of the case, in my opinion custodial interrogation is not required. As such, considering main factor of the presence of the applicant and the role of the present applicant in the alleged offence, in my opinion

this is a fit case, wherein discretion can be used in favour of the applicant/accused, as applicant/accused will never flee away from the justice nor tamper with witnesses. There is no possibility of tampering with evidence. As such, considering principles laid down in the above cited cases and considering facts and circumstance of the present case, in my opinion, present anticipatory bail application deems to be allowed. However, to maintain the law and order and to avoid any untoward incidents to happen in future before charge-sheet is filed, it is desirable if stringent conditions are put against applicant/ accused, and hence I pass the following order.

-: ORDER :-

The present anticipatory bail application is hereby allowed on merits.

The Investigating Officer of Kosamba Police Station is hereby directed to release the applicant - **Mohamad Bilal Gulamrasul Kagzi**, Aged about 37 years, Occupation : Advocate, Residing behind Government Hospital, Kosamba, Tal. Mangrol, Dist. Surat in the event of his arrest in connection with offence registered at Kosamba Police Station vide I-C.R.No.136/2019 for the offence punishable U/s.143, 144, 148, 149, 307, 323, 324, 325, 427, 120(b), 504 and 506(2) of I.P.C. on furnishing one **local solvent surety of Rs.10,000/- (Rupees Ten Thousand Only)** and **on executing the personal bond of like amount, for the satisfaction of trial Court** subject to following terms and conditions :-

- (1) The applicant/accused shall make himself available for interrogation by Investigating Officer on **31st August, 2019** and co-operate with Investigating Officer, in the offence registered against him.

- (2) The applicant/accused shall 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 from disclosing such facts to the Court or to any other police officer.
- (3) The applicant/accused **shall not leave the boundaries of State of Gujarat without previous permission of the trial Court.**
- (4) The applicant/accused **shall not enter into the vicinity where the complainant or witnesses reside and do their business.**
- (5) The applicant/accused shall furnish the details of the passport and deposit it with the custody of the Court within 7 days of this order, and if he does not possess the passport, he shall file an undertaking on oath within 7 days from the date of passing of this order to that effect.
- (6) The Investigating Officer is at liberty to seek remand of the applicant, if required for the purpose of investigation and the Ld. Magistrate shall decide the remand application on merits without being influenced by this order.
- (7) Yadi be sent accordingly.

Signed and pronounced in open Court
today on this 27th day of August, 2019.

Date:27/08/2019.

(PRAKASHCHANDRA SAMARTABHAI KALA)
Additional Sessions Judge,
Surat.
Code No. GJ 00436.