

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 13785 of 2020****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE SAMIR J. DAVE**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	-YES-
2	To be referred to the Reporter or not ?	-YES-
3	Whether their Lordships wish to see the fair copy of the judgment ?	-NO-
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	-NO-

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HARISINH ABHESINH PARMAR

Versus

STATE OF GUJARAT

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Appearance:

MR BM MANGUKIYA(437) for the Applicant(s) No. 1

MS BELA A PRAJAPATI(1946) for the Applicant(s) No. 1

MR RC KODEKAR, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SAMIR J. DAVE**Date : 04/01/2023****ORAL JUDGMENT**

1. 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 C.R.No.I-11822003201169 of 2020 registered with the Vansda Police Station, District: Navsari for the offence punishable under Sections 406, 420, 409, 114 and 120B of the Indian Penal Code.

2. 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. That, on a bare reading of the FIR, the ingredients of the alleged offences are not made out. There is no question of criminal breach of trust as alleged by the complainant in the impugned FIR. That, there is no allegation in the FIR that the applicant wanted to cheat the complainant right from the beginning. That, the applicant is aged about 63 years and suffering from various physical ailments. That, the Chairman and the members of the Executive Committee, in connivance with each other, did not permit the applicant to retire and implicate him in commission of the alleged offence though the applicant has nothing to do with the offence as alleged.

3 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. Ultimately, it was submitted by learned advocate for the applicant to allow present application.

4. 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. That, the applicant is involved in the serious offence as alleged and therefore, no leniency view would be taken in favour of the applicant while releasing him on anticipatory bail. That, before the trial court, in the anticipatory bail application filed by the applicant, the investigating officer has filed his affidavit and from the contents of the affidavit, it appears that the applicant was the Secretary of the Chapaldhara Seva Sahakari Mandali and at that time he has made financial misappropriation and if investigating agency has expressed his apprehension that if the applicant is released on anticipatory bail, then he may tamper and hamper the evidences and witnesses respectively. Ultimately, it was submitted by learned APP for the

respondent-State to reject present application.

5. 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.

6. Having heard the learned counsels for the parties and perusing the record of the case and taking into consideration the facts of the case, it appears that the applicant is the main accused in the FIR. It appears from the conclusion of the learned trial court while rejecting anticipatory bail application filed by the applicant that during the period from 01.04.2016 to 31.03.2019, the applicant in abetment of other co-accused have made financial misappropriation of Rs. 1,41,22,664.86. Learned trial court has specifically observed that as per the affidavit filed by the investigating officer, the investigation of the present offence is going on and custodial interrogation of the applicant is required as well as there is prima facie case against the present applicant.

7. In case of **XXX v/s Arun Kumar C.K & Anr. Reported in 2022 Live Law (SC) 870 (Criminal Appeal No. 1834/2022) @Petition for Special Leave to Appeal (Crl.) No.7188/2022**), Hon'ble Apex Court has held that:

“Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial

interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the

accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment.”

8. In case of **Prahlad Singh Bhati versus N.C.T. Delhi and another reported in 2001 AIR SCW 1263**, has observed as under in para 8 of the report :

"8. The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the

larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purpose of granting the bail, the Legislature has used the words 'reasonable grounds for believing' instead of "the evidence" which means the court dealing with grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

9. Therefore, considering the law which has been laid down by the apex court and considering the averments made in the complaint filed by the original complainant and after considering the observations made by the learned sessions judge concerned, this court is of the considered view that custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail and this is not the case where the discretion should be exercised in favour of the applicant for

anticipatory bail. Therefore, this application is required to be rejected.

10. Before parting with this judgment, it is hereby clarified that the aforesaid observations made in this order have been made for the purpose of considering the present application for anticipatory bail. Therefore, same shall not come in the way of the trial court for considering the application that may be filed by the applicant for regular bail or at the time of trial and the trial court concerned shall not be influenced by the observations made hereinabove.

11. In the result, this application is rejected. Interim relief, if any, stands vacated.

Rule Stands discharged.

K. S. DARJI

(SAMIR J. DAVE,J)