

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION NO. 14585 of 2021

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PRATAPDAN SHAMALDAN GADHVI
Versus
STATE OF GUJARAT

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Appearance:

MR J M PANCHAL, SR. ADVOCATE WITH MR EKANT G AHUJA(5323) for
the Applicant(s) No. 1,2
MR BHAVDUTT H BHATT(6162) for the Respondent(s) No. 1
MR. KIRTAN H MISTRY(10012) for the Respondent(s) No. 1
MR L B DABHI, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 13/06/2022

ORAL ORDER

1. Heard learned Senior Advocate Mr. J.M. Panchal with learned Advocate Mr. Ekant Ahuja for the applicants, learned Additional Public Prosecutor Mr. L.B. Dabhi on behalf of the respondent-State and learned Advocate Mr. Bhavdutt H. Bhatt for the original complainant.

2. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicants pray for being released them on anticipatory bail in connection with **FIR being C.R. No. 11191013211096 of 2021** registered with **Krushnanagar Police Station, District Ahmedabad** on 20.07.2021 for offences punishable under Sections 498(A) 377, 323, 294(B), 506(2) and 114 of the Indian Penal Code and Sections 3 and 7 of the Dowry Prohibition Act.

3. Learned Senior Advocate Mr. J.M. Panchal for the applicants would submit that the applicants before this Court are the father-in-law and mother-in-law of the daughter of the complainant. It is submitted that the daughter of the complainant was married to son of the applicants, namely

Dharmendrabhai in the year 2007 and whereas on account of some marital discord, the daughter of the complainant was staying in her parental home since few days and on 15.07.2021, the daughter of the complainant had gone missing and whereas the present FIR came to be filed thereafter. Learned Senior Advocate Mr. Panchal would take this Court through the averments/allegations made in the FIR in detail. Learned Senior Advocate would try to emphasize that the daughter of the complainant as well as accused No.1 i.e. her husband were living separately from at least 2013. Learned Senior Advocate would submit that in the interregnum, more particularly the marriage span being of almost 14 years, the daughter of the complainant had at some point of time gone back to her parental home and as per the averments in the FIR itself, she had been called by the applicants to come back to her matrimonial home, more particularly with a condition that a house would be purchased in the name of the daughter of the complainant. Learned Senior Advocate would submit that as far as the allegations against the applicants are concerned, general allegations for offences punishable under Section 498(A) of the IPC have been levelled and whereas learned Senior Advocate would submit that there are no allegations against the applicants for having committed any other offences as found in the FIR. Learned Senior Advocate would draw the attention of this Court to birth certificate of the son of the daughter of the complainant, wherein according to the learned Senior Advocate, they were staying independently and whereas the address of the house is mentioned in the said birth certificate. Learned Senior Advocate would further draw the attention of this Court to a document, whereby the house which the daughter of the complainant and her husband were last staying together, was also purchased in the name of the daughter of the complainant and her husband and whereas it is submitted that they were staying there at least from the year 2018 onwards. Learned Senior Advocate would thereafter draw the attention of this Court to a Chart at Para 5 of the application and would submit that the present applicant No.1 is working in the police force and he had been posted at

various places throughout the State of Gujarat and whereas list of places have been shown in the Chart along with time period and whereas learned Senior Advocate would submit that except for visiting their son and his family, the present applicants had never stayed with the daughter of the complainant and her husband in a single house. Learned Senior Advocate would thereafter draw the attention of this Court to a Janvajog Entry No. 156 of 2021, dated 15.07.2021 and would submit that in the said Janvajog Entry there is a reference to a letter written by the daughter of the complainant when she had left her house and whereas pertinently learned Senior Advocate would emphasize on the fact that in the said Janvajog Entry, the complainant clearly states that he does not have any suspicion on anybody with regard to his daughter having gone missing. Learned Senior Advocate would thereafter refer to transcript of an audio clip sent by the daughter of the complainant when he had gone missing and whereas according to the learned Senior Advocate, in the said audio clip while the daughter of the complainant states that she is not ready to take any more tension and therefore she was going to commit suicide and whereas it was submitted that the husband of the daughter of the complainant had allegedly threatened the daughter of the complainant that he would commit suicide and therefore the daughter of the complainant being fed up by such threats, had stated that today she will commit suicide and will show him. Learned Senior Advocate would emphasize on the fact that the daughter of the complainant wanted to live in her parental house and whereas her family members wanted to send her to the matrimonial house and therefore it appears that she had decided to end her life.

4. At the direction of this Court, learned APP Mr. Dabhi had produced copy of the suicide note written by the daughter of the complainant, wherein in addition to ask for her forgiveness from her family members, there are no allegations whatsoever made against the applicants herein and whereas some allegations are levelled against the husband of the daughter of the complainant. Learned Senior Advocate would further submit in this

regard that as such, fortunately the daughter of the complainant did not commit suicide and whereas she was traced out/returned back and whereas insofar as the husband of the daughter of the complainant is concerned, he is lodged in jail in connection with the present FIR. Learned Senior Advocate would thus submit that the FIR does not state any specific allegation against the present applicants, while it appears that the FIR was filed when the daughter of the complainant had gone missing and furthermore, at the relevant point of time neither in the Janvajog Entry nor in the audio clip forwarded by the daughter of the complainant reflect any harassment by the applicants herein. Learned Senior Advocate would rely upon the decision of learned Co-ordinate Bench of this Court dated 17.03.2022 in Criminal Misc. Application No. 14824 of 2021, whereby accused No.4 is stated to have been released on anticipatory bail. Submitting thus learned Senior Advocate would request this Court to release the applicants on anticipatory bail.

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

5. This application is vehemently opposed by learned Advocate Mr. Bhavdutt H. Bhatt for the original complainant. Learned Advocate Mr. Bhatt would submit that while it is attempted to be stated that the applicants were living separately, but infact according to learned Advocate, the applicants were staying in the same building. It is submitted by learned Advocate that very serious allegations have been levelled against the accused including the present applicants in the FIR and whereas this Court may not

exercise discretion in favour of the applicants. Learned Advocate would further submit that as such, few days before the incident, all the accused including the present applicants had visited the house of the complainant and had threatened the daughter of the complainant, when husband of the daughter of the complainant had gone missing that he might commit suicide. Learned Advocate Mr. Bhatt would further submit that as such even later on, the applicant No.1, had threatened one Rinkuben who is a witness in the case and had made statement in favour of the daughter of the complainant. Learned Advocate Mr. Bhatt would therefore submit that this Court may not exercise discretion in favour of the present applicants.

6. As against the same, learned Additional Public Prosecutor Mr. Dabhi appearing on behalf of the respondent-State has also resisted grant of anticipatory bail in favour of the present applicants. Learned APP would submit that the daughter of the complainant after she had returned back/traced out, had given a statement on 18.01.2022, wherein she has reiterated allegations made in the FIR. Learned APP would also draw the attention of this Court to the statement of one Rinkuben, who had inter alia stated that there were problems between the daughter of the complainant and the accused and whereas according to the said statement, applicant No.1 herein was having short-temper and he used to harass the daughter of the complainant. Thus submitting learned APP would request this Court not to exercise discretion in favour of the applicants.

7. In rejoinder learned Senior Advocate Mr. Panchal would submit that while the daughter of the complainant had been traced out/ returned back on 25.12.2021, her statement is recorded after approximately 22 days which gave her and her family members enough time to decide the future course of action and thus her statement was nothing but a reiteration of the FIR. Learned Senior Advocate would therefore request this Court to release the

present applicants on anticipatory bail.

8. Heard learned Advocates for the respective parties, who have not submitted anything further.

9. At the outset, it is required to be noted that the FIR inter alia makes allegations against the husband of the daughter of the complainant, father-in-law, mother-in-law - present applicants, brother-in-law, sisters-in-laws and husband's sisters-in-laws. It would also be pertinent to note that except the present applicants and their son i.e. husband of the daughter of the complainant who is in custody, all other accused have been released on anticipatory bail. It would also be pertinent to mention that similar type of allegations have been levelled against the accused No.4 - brother-in-law who has been released on anticipatory bail by co-ordinate Bench of this Court vide order dated 17.03.2022 in Criminal Misc. Application No. 14824 of 2021. Insofar as the aspect of grant of anticipatory bail is concerned, it is required to be noted that the span of marriage life between the daughter of the complainant and the son of the applicants was of approximately 14 years and whereas it appears that during the marriage period, the applicants, more or less were residing separately, more particularly the applicant No.1 being a police officer, was posted at various places. It may have been that during the time when the applicant No.1, was facing proceedings under the Prevention of Corruption Act, that he may have lived with his son and her daughter-in-law, but at the same time the documents relied upon by the applicants which are not controverted by the complainant clearly reflect that the daughter of the complainant and her husband were staying independently.

10. Perusal of the FIR also reveals that allegations against the applicants are with regard to offence punishable under Section 498(A) and whereas

while it is stated that the daughter of the complainant was not accorded proper dignity by her in-laws including the applicants, but in the considered opinion of this Court, that by itself may not be a relevant ground to refuse grant of anticipatory bail. From the narration of events, it appears to this Court that while there used to be marital discords between the daughter of the complainant and her husband and whereas the daughter of the complainant used to come to her parental house at that stage, and whereas from the suicide note as well as the audio clip, it could be culled out that since the family members were of the opinion that the daughter of the complainant should return back, therefore she had contemplated to commit suicide. It also appears that the daughter of the complainant was also disturbed by the threats administered by her husband that he would commit suicide and whereas the daughter of the complainant appears to have wanted to teach lesson to her husband. It also appears that the crux of the allegations including the allegations with regard to the offence under Section 377 etc. of the IPC, are against the husband of the daughter of the complainant. Furthermore, as mentioned hereinabove that similar types of allegations have been levelled against the accused No.4 - brother-in-law who has been released on anticipatory bail by co-ordinate Bench of this Court vide order dated 17.03.2022 in Criminal Misc. Application No. 14824 of 2021, therefore, in the considered opinion of this Court, the ground of parity would apply in favour of the applicants.

11. Insofar as the submissions with regard to Rinkuben, it appears that the Rinkuben had given an application with regard to the alleged threats by the present applicants to one of her relatives and whereas it does not appear that such an application had either been inquired or the said Rinkuben had followed the said application. As far as the statements of the said Rinkuben are concerned, this Court notes that the Rinkuben had alleged more than what is alleged in the FIR itself, inasmuch as the Rinkuben had alleged that

the first informant had given Rs. 10 Lacs for purchase of the flat and whereas the first informant himself does not make any allegation with regard to the same. Under such circumstances, this Court would not accord any importance to the statement of Rinkuben at this stage.

12. In this view of the matter, in the considered opinion of this Court, since the gravity of the allegations against the applicants are not such that the applicants should be denied benefit of anticipatory bail, the applicant being a public servant and the applicant No.2 being his wife, there could not be any apprehension that the applicants would flee from trial. Insofar as the allegation that since the applicant No.1 is a police inspector, he might tamper with the investigation, in the considered opinion of this Court, appropriate conditions can be set out to ensure that the such apprehension are allayed.

13. In this view of the matter 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.

14. In the result, the present application is allowed by directing that in the event of applicants herein being arrested pursuant to the **FIR being C.R. No. 11191013211096 of 2021** registered with **Krushnanagar Police Station, District Ahmedabad**, the applicants shall be released on bail on furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand only) each with one surety of like amount, on the following conditions :

- (a) shall cooperate with the investigation and make themselves available for interrogation whenever required;
- (b) shall remain present at the concerned Police Station on **16.06.2022** 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 their 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.

15. Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicants to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. The applicants 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 applicants, 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.

16. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the applicants on bail. Rule is made absolute to the aforesaid extent. Direct service is permitted.

BDSONGARA

(NIKHIL S. KARIEL,J)

