

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 5899 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE M. R. MENGDEY

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
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

MALAV AJITBHAI MEHTA
 Versus
 STATE OF GUJARAT

Appearance:

SHRI B.B.NAIK, SENIOR ADVOCATE with MR. BHADRISH S. RAJU, ADVOCATE and MR TATSAT A BHATT(12760) for the Petitioner(s) No. 1
 SHAHIL A SARWANI(8432) for the Petitioner(s) No. 1

MR. DEVANG VYAS, ADDITIONAL SOLICITOR GENERAL with MR. KSHITIJ AMIN, STANDING COUNSEL for Respondent(s) No. 2

MR. UTKARSH SHARMA, APP for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE M. R. MENGDEY

Date : 08/05/2023

ORAL JUDGMENT

1. The present Application has been preferred by the Petitioner / Original Accused under Article 226 and 227 of the Constitution of India read with

Section 482 of the Code of Criminal Procedure, 1973, challenging the order dated 4.5.2023 passed by the learned Special Judge – CBI, Court No.3, City Civil & Sessions Court, Ahmedabad below Application Seeking remand / Police Custody in respect of RC-0292022A0011 GNR, whereby the Petitioner is ordered to be subjected to Police Remand for a period of two days.

2. Heard learned Senior Advocate Shri B.B.Naik appearing with learned Advocate Mr. Bhadrish S. Raju and learned Advocate Mr. Tatsat A. Bhatt for the Petitioner.

2.1 Learned Senior Advocate Shri B.B.Naik has submitted that initially the FIR in question was lodged before the ACB Police Station. Subsequently the investigation has been transferred to CBI. The co-accused Santosh Kamani happens to be a Class-I Officer of the Revenue Service of the Government of India.

2.3 As per the case of prosecution, on 4.10.2022, the first informant had sent a sum of Rs.30,00,000/- to the Angadia. It was intercepted by the CBI before it could be handed over to anybody. It is alleged against the present Petitioner that he had called upon the owner of the Angadia service and had asked to hand over the amount of Rs.30,00,000/- deposited by the first informant with the Angadia Pedhi to the person deputed by him for the purpose.

2.4 Thereafter the Applicant had approached this Court by filing a Anticipatory Bail Application. Vide order dated 25.10.2022, this Court had protected the present Petitioner against his arrest pending the Application. Vide order dated 19.12.2022, the Application filed by the Petitioner for Anticipatory Bail was allowed by this Court and he was ordered to be enlarged on bail in the eventuality of his arrest. Learned Senior Advocate Shri Naik submitted that after he was granted protection vide order dated 25.10.2022, the Petitioner had

remained present before the Investigating Agency (“IA” for short) thrice. Upon being asked to do so and even after the anticipatory bail application was allowed by this Court, the Petitioner had remained present before the IA. The Petitioner has thus subsequently cooperated with the IA in the present case. Learned Senior Advocate Shri Naik submitted that the IA wants to obtain a confessional statement from the present Petitioner for which remand of the present Petitioner is sought. He submitted that the main accused namely Santosh Kamani was also ordered to be enlarged on anticipatory bail by this Court. The said order came to be challenged before the Hon’ble Supreme Court and the Hon’ble Supreme Court was pleased to cancel the anticipatory bail granted to the co-accused pursuant to which the said Santosh Kamani had surrendered before the IA. After his surrender on 30.4.2023, the present Petitioner was called upon by the IA to remain present for interrogation along with the said Santosh Kamani. The Petitioner had remained present before the IA on the said date for nine and half hours. Thereafter on 2.5.2023, the application for police remand of the Petitioner was submitted by the IA. Learned Senior Advocate Shri Naik submitted that pursuant to the order of this Court dated 19.12.2022 ordering the Petitioner to be enlarged on anticipatory bail, the Petitioner has never been arrested in connection with the present offence.

2.5 Section 167 of the Code of Criminal Procedure requires the Petitioner to be in custody for subjecting him to police remand. Since, after the order of anticipatory bail was passed by this Court, the Petitioner was never arrested, he cannot be said to be in custody, and therefore, the lower court ought not to have subjected the Petitioner to the police custody.

2.6 Learned Senior Advocate Mr. Naik submitted that the grounds mentioned in the Petition for remand before the lower court do not require the Petitioner to be subjected to police remand.

Learned Senior Advocate Shri Naik therefore submitted to allow the present Petition and quash and set aside the order impugned in the present Petition.

3. The Petition is opposed by the learned Additional Additional Solicitor General Shri Devang Vyas inter alia contending that the Petitioner has remained present before the IA. As and when asked to do so, he has not cooperated with the investigation in the present case. He submitted that during the course of investigation, the IA has collected certain material which indicates clear nexus between the present Petitioner of the offence in question and the Petitioner is required to be confronted with the said material for taking the investigation of the offence to its logical conclusion. He submitted that the IA is not desirous of obtaining any confessional statement from the present Petitioner nor would it be of any help to the IA. He submitted that the lower court has taken all the aspects into consideration and has passed the appropriate order, which requires no interference at the hands of this Court in the present Petition. He therefore submitted to dismiss the present Petition.

4. Heard learned Advocates for the parties and perused the record.

5. The main ground raised on behalf of the Petitioner is to the effect that after the order dated 19.12.2022 passed by this Court in Criminal Miscellaneous Application No. 20213 of 2022, whereby, the Petitioner was ordered to be enlarged on anticipatory bail by this Court, the Petitioner was never arrested by the IA in connection with the present offence, and therefore, the Petitioner cannot be said to be in custody and hence it could not have been subjected to any police remand.

5.1 In this regard what is observed by this Court in its order dated

19.12.2022 is required to be seen. This Court, in its order has observed as under:

“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.”

5.2 Going by this aforesaid observations made by this Court, the Petitioner is required to be considered to be in custody for consideration of an application for police remand, and therefore, the argument canvassed on behalf of the Petitioner should fail.

6. Learned Additional Solicitor General has produced the relevant papers of investigation before this Court.

6.1 It would be appropriate for this Court at this stage to disclose as to what is the material available against the present Petitioner to connect him with the offence in question. However, the material produced before this Court by the IA prima facie establishes the connection between the present Petitioner and the Angadia Pedhi involved in the matter. The material also prima facie indicates the fact that it was the present Petitioner who had called up the owner of the Angadia Pedhi and had asked him to hand over the amount deposited by the first informant to the person deputed by him for the purpose

7. The apprehension voiced on behalf of the Petitioner that the IA is

desirous of obtaining any confessional statement from the petitioner appears to be a misconception at this stage. It has also been made clear by the learned Additional Solicitor General that the IA does not intend to obtain any confessional statement from the Petitioner nor would it be of any use to the IA.

8. Having perused the order passed by the lower Court, it appears that the lower court has also taken into consideration the material available on record referred to herein above while passing the impugned order.

8.1 Considering the said fact, the present Petition appears to be devoid of any merit and therefore requires to be dismissed and accordingly stands dismissed.

9. Before parting, the learned Senior Advocate Shri B.B.Naik for the Petitioner submitted to stay this order to enable him to approach the Hon'ble Apex Court. He submitted that if the order is stayed by this Court, the period for which the order remained stayed would automatically get extended of the IA to have much more time in seeking the police remand of the present petitioner considering the fact that vide the impugned order, the Petitioner was subjected to police remand from 4.5.2023 to 6.5.2023 it was stayed by the Lower Court. It is also required to be stated that the period for the IA to file charge sheet would not be extended.

9.1 Considering the said fact the request for stay is turned down.