

Filed on :
Registered on :
Decided on :
Duration :
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**IN THE COURT OF PRINCIPAL DISTRICT
& SESSIONS JUDGE
AHMEDABAD (RURAL) @ AHMEDABAD.**

CRI. MISC. APPLN. NO.260 of 2017

Shri Anil Bhagwandas Jaisinghani
Age; 53 yrs, Occup: Business
R/o Jaisinghani House
Flat No.101, Mohan Life Style,
Goal Maidan, Ulhasnagar,
Thane 421 001. Applicant.

V E R S U S

The State of Gujarat Opponent
(Notice to be served through
Ld.P.P., Ahmedabad (R).)

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Application u/s. 438 of Cr.P.C. for Anticipatory bail.
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APPEARANCE:

Shri C.K. Pandya L.A. for the applicant.
Shri P.M. Trivedi , Learned D.G.P. for the opponent State.
Shri V.P. Barot Ld. Advocate with Prosecution

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

1. This is an application filed by present applicant u/s.438 of the Criminal Procedure Code for releasing him on anticipatory bail.
2. The applicant has apprehension to be arrested for the offences u/s. 465, 467, 468, 471 and 193 of IPC registered with the Sola Police Station Ist C.R. No. 196/2016.

It is contended that it is the case of the informant that the applicant had filed Spl. Cri. Appl. No.6719 / 2015 before Hon'ble High Court of Gujarat challenging the order dated 30/5/2015 passed by this Court of issuance of NBW in connection with ECIR /03/AMZO/2015. While preferring this petition, the applicant has forged certain documents to place before the Hon'ble Court. Hence, an FIR is lodged by the informant to initiate the proceedings against the applicant.

2. It is contended that applicant filed Sp. Cr.Appl. No.6719 /2015 before the Hon'ble High Court of Gujarat challenging the order dated 30/5/2015 passed by this Court of issuance of NBW in connection with ECIR /03/AMZO/2015 and to convert the Non bailable warrant to bailable warrant and accept surety as directed by this Hon'ble Court vide order dated 19/11/2014 passed in Spl. Cr. Appl. No.4697/2014. It is contended that the Hon'ble Gujarat High Court was pleased to pass order dated

6/11/2015 to issue notice and granted ad-interim relief. It is contended that the informant has filed Misc. Cri. Appl. No.9794 of 2016 before the Hon'ble Gujarat High Court praying to join the informant as party respondent in the said Spl. Cri.Appl. No.6719/2015. It is submitted that till date, the informant is neither joined as respondents nor interim relief is vacated. It is contended that the said Sp.Cri.Appl No.6719/2015 is pending for hearing as also Cri.Misc.Appl. No.9794/2016. It is contended that the informant has raised similar allegations and issues in the Cri.Misc.Application before the Hon'ble High Court of Gujarat, however, till date the Hon'ble High Court of Gujarat did not vacate the interim relief. It is contended that the applicant has not committed any offence as alleged in the FIR. It is contended that applicant's wife has expired on 1/2/2017 at about 5.00 p.m. The informant has also filed false FIRs against the applicant, the applicant had moved before the Hon'ble Bombay High Court for anticipatory bail to attend the funeral ceremonies of his wife and the Hon'ble Bombay high Court was pleased to grant ad-interim relief to the effect that in the event of arrest, the applicant be enlarged on bail in Cri. Anticipatory Bail Appl. No.196/2017 and 197/2017 vide order dated 1/2/2017. It is contended that the offense ingredients of offence such as Sec. 470, 471, 464, do not satisfy in the

present case. It is contended that the allegations made in the FIR are false and incorrect. That the entire case is based on documentary evidence and no custodial interrogation is required. The applicant is ready to cooperate in the investigation. It is contended that the case relates to the documentary evidence and documents are part of Spl. Cri.App; No.6719/2015 pending before the Hon'ble High Court. There is no question of tampering with the evidence. It is contended that applicant is permanent resident of Thane. If the applicant is arrested then it would cause harm to the reputation of the applicant. The applicant requires to attend funeral ceremony of his wife and therefore, on humanitarian ground also the applicant be enlarged interim protection of anticipatory bail pending hearing of the anticipatory bail application. It is contended that the applicant has movable and immovable properties and has deep roots in the society. The applicant is ready and willing to abide by the conditions which may be imposed while granting anticipatory bail.

3. On all such grounds and circumstances the applicant has filed this application for being released him on anticipatory bail.
4. The factual matrix of the FIR is as under:

That Non Bailable Warrant was issued by Enforcement Department against the accused Anil Bhagwandas

Jaysinghani, resident of Maharashtra in CR No. ECIR/03/AMZO/2015. That with regard to the said Non Bailable Warrant the accused Anil Bhagwandas approached Hon'ble Bombay High Court for anticipatory bail. The Hon'ble Bombay High Court was pleased to grant 3 week's transit bail in Petition No.1612/2015. Thereafter the accused Anil Bhagwandas approached Hon'ble High Court of Gujarat by filing Spl. Cri. Appl. No.6719 of 2015 and produced forged copy of the petition filed before the Hon'ble High Court of Bombay by editing it.

5. This Court had issued notice to the opponent. Learned D.G.P. Shri P.M. Trivedi has appeared on behalf of Government, while complainant has appeared through With Prosecution Advocate Shri V.P. Barot and investigating agency has filed affidavit in support of the complaint and also submitted police papers.
6. The complainant has filed affidavit opposing bail application vide Exh.6. It is submitted that applicant has played fraud with the Hon'ble High Court while procuring interim relief. It is stated that the applicant has tampered with the original memo of petition ABA 1612/2015 and has placed altered memo . It is stated that applicant is hardcore criminal. It is contended that applicant accused was absconding for 119 days. It is stated that two applications being No. ABA 198/2017 and 199/2017

for transit bail were rejected by Hon'ble Bombay High Court. It is contended that the investigation is standstill due to complete non cooperation of the petitioner in the offences registered against him at Sakina Police Station, Azad Maidan Police Station, Anjuna Police Station, etc.

7. The applicant has filed his affidavit in rejoinder vide Exh.6 and has denied the contents of the affidavit in reply in toto. It is denied that the applicant has played fraud with the Hon'ble High Court of Gujarat in procuring order of interim relief. It is denied that tampered memo and altered memo of the petition filed before the Hon'ble Bombay High Court is placed. It is denied that the deponent(applicant) has not come with clean hands before this Court. It is denied that deponent (Applicant) is in habit of forging the order of the Hon'ble High Court. It is also denied that applicant is not cooperating in the offences registered against him in Sakinaka Police Station, Azad Maidan Police Station, Anjuna Police Station, Goa coupled with the fact that there are 14 cases registered against the deponent(applicant).
8. The Complainant has filed reply to affidavit in rejoinder of the applicant vide Exh.10. It is contended that applicant was aware about the FIR dated 7/10/2016 in question and hence moved an application for transit bail before the Jabalpur High

Court on 2/12/2016. Thus the statement of the applicant is false and misleading. It is contended that in ABA 198/2017 before the Hon'ble Bombay High Court no interim protection was granted. It is contended that applicant is making a deliberate false statement which tantamount to perjury. It is contended that as per the affidavit filed by ED in Cri.Misc.Appl. No.6719/2015 the investigation under PMLA in respect of Anil Jaisinghani is still pending on account of non-cooperation of the petitioner. It is contended that on perusal of FIR it would become clear that an FIR has been registered against the petitioner for producing false medical certificates before the Hon'ble Bombay High Court. It is stated that the petitioner has been deliberately and willfully made false statement and averments and is also denying factual aspects of oath about FIR registered at Azad Maidan Police Station against the petitioner.

9. The I.O. has in affidavit submitted that the investigation is going on. It is contended that statement of the Advocate Shri Vikram Chauhan of Bombay High Court is to be taken and statements of some witnesses residing at Mumbai and Ullashnagar are pending to be taken. It is apprehended that if anticipatory bail is granted the applicant would not give support in investigation and may hamper or tamper with the evidence.

That there are many other offences registered against the applicant in Mumbai and Goa and so he is habitual offender.

10. I have heard arguments of L.A. Mr. C.K. Pandya for the applicant and also heard arguments of learned D.G.P Shri P.M. Trivedi for the State.
11. L.A. Shri C.K. Pandya for the applicant has come forward with the case that as such there is no case of offence U/s 465, 467, 468, 471, 193 of IPC since there is no case of forgery or preparing forged documents and just due to mistake of Advocate some paragraphs were not shown before the Hon'ble High Court, therefore, police has filed the case U/s 465, 467, 468, 471, 193 of IPC.

Ld. Advocate Shri C.K. Pandya has placed reliance upon the following judgments

[1] [2014] 16 Supreme Court Cass 623 in the case of Sundeep Kumar Bafna V/s State of Maharashtra and Another.

[2] Spl. Leave to Appeal (Cri.) Nos. 6797/2015 before Hon'ble Supreme Court in the case of Ramnath Sharma V/s Dy. Director,ED.

12. "*Per Contra*" learned Advocate Shri V.P. Barot with prosecution, who had initially moved for audience but the same was disallowed by this Court and liberty for six days to move before the Hon'ble High Court was granted but subsequently,

they have not moved before the Hon'ble High Court and therefore, since he was permitted to assist Ld. DGP through documents only, therefore, at Exh.14 following citations are submitted.

1. 2009 CRI. L.J. 896 in the case of Vinay Poddar V/s The State of Maharashtra
2. AIR 2000 S.C. 1851 (1) in the case of R. Rathinam V/s The State and another .
3. AIR 2001 SC 1820 in the case of Manohar Lal V/s Vinesh Anand and another.
4. AIR 2001 SC 2023(1) in the case of Puran vs Rambilas and another
5. AIR 2009 SC 1021 in the case of Brij Nandan Jaiswal Vs Munna @ Munna Jaiswal and Anr.

But with respect these judgments are with regard to audience before this Court and the said issue is decided and therefore, there is no need to discuss more.

13. "*Per Contra*" learned D.G.P. Shri P.M. Trivedi on behalf of the State has come forward with the case that the applicant is habitual offender, there is prima-facie case against him, investigation is going on and so, custodial interrogation is required. It is submitted that whatever submission is made by with prosecution may be treated as his arguments and appropriate order be passed.

14. Having heard the arguments advanced by both the parties, as per the catena of decisions of Hon'ble High Courts as well as Hon'ble Supreme Court, there are mainly two factors which are required to be kept in mind while deciding application u/s.438 of the Cr. P.C. and also while exercising discretion u/s.438 of Cr. P.C.

1. Prima facie case against the accused.

2. Necessity of accused for the custodial interrogation.

15. Pursuant to the F.I.R., affidavit and police papers, it is undisputed that applicant is enlarged on anticipatory bail by Hon'ble Bombay High Court in one of the offences but few paragraphs were not shown before the Hon'ble High Court. Therefore, to some extent it is suppression of material facts but whether the case false U/s 465, 467, 468 of IPC ? for which investigating officer has submitted that same was not revealed in Spl. Cri. Appl. No.6719/2015 on 6/112015 before the Hon'ble High Court, therefore false documents is prepared. Further it is submitted in the affidavit by the I.O. that applicant is registered with offence under ED CR No. ECIR /03/AMZO/2015 and NBW is issued for which anticipatory bail was preferred before the Hon'ble High Court and thereafter Spl. Cri. Appl. No. 6719/2015 was filed wherein few paragraphs were deleted. But, simultaneously it is pertinent to

note that there are 14 offences registered against the present applicant such as :

Sr.	Police Station	C.R. NO.	Section
1.	Ulhasnagar PS, Thane	C.R. No. 132/1985	IPC 363, 342, 328, 34
2.	Ulhasnagar PS, Thane	C.R. No. 226/1987	IPC 324, 323, 504, 34
3.	Vithalwadi PS, Thane	C.R. No. 228/1987	IPC 120b, 118 Arms Act, 25(C)
4.	Ulhasnagar PS, Thane	C.R. No. 730/1988	IPC 307,341,147,148,149
5.	Ulhasnagar PS, Thane	C.R. No. 324/1988	IPC 506(2), 323
6.	Ulhasnagar PS, Thane	C.R. No. 139/1994	IPC 384,387,506,34
7.	Ulhasnagar PS, Thane	C.R. No. 155/2002	I/T Act 25(c)& IPC 468, 469, 420
8.	Central PS, Thane	C.R. No. 574/2003	IPC 189, 507
9.	Ulhasnagar PS, Thane	C.R. No. 47/2015	IPC 506(ii) 507, 294
10.	ED, Ahmedabad	C.R. No. 8/2015	U/s 3 & 4 PMLA Act r/w 120(B) of IPC
11.	Azad Maidan Mumbai	C.R. No. 172/2016	IPC 420, 465, 467, 468,471 474 R/W 34 of IPC
12.	Sakinaka, Mumbai	C.R. No. 487/2016	IPC 465, 468, 471,473, 506 r/w 192 of MV Act
13.	Sola P.S. Ahmedabad	C.R. No. 196/2016	IPC 465, 467,468, 471, 193
14.	Anjuna P.S. Goa	C.R. No. 79/2016	IPC 384, 420, 465, 467,471 474, 109, 114, 115, 182, 193, 195, 199, 200, 205, 201, 120(b) R/w 34 of IPC

It is settled principle of law that while exercising discretion U/s 438 of Cr.P.C. the conduct of the accused is also required to be examined on the basis of past antecedent. In the present case there are 14 cases registered upon the present applicant including serious case under PMLA. Therefore there are

chances of tampering with the bail as well as the witnesses. Not only that but without the custody of the present applicant, upon whose such large number of cases are pending for which presence of accused is required. Therefore, when the case is registered u/s 467 wherein imprisonment is upto life, further 14 cases are registered, therefore also this is not the fit case to exercise discretion U/s 438 of Cr.P.C.

16. Ld. Advocete Mr. Pandya has relied upon two judgments and submitted that merely tampering with the papers did not amounts to forgery:

[1] 1992 (2) GLH 306 in the case of State of Gujarat V/s Motibhai Jethabhai Makwana

“IPC- Sec. 464, 465- The accused were expected to prepare the balance sheet -Balance sheet containing incorrect facts – Does it amount to making of a false documents, punishable u/s 464 -Held in negative.”

With respect I agreed with principles laid down, but in the present case the offence is registered U/s 467 wherein the punishment is upto life. Therefore, the said is not helpful to the applicant.

[2] 1984 GLT 21 in the case of State V/s Maganbhai Jivramdas and Anr.

“Accused submitted a bill for Leave Travel Benefit- Complaint against him filed U/s 465 of IPC. Held it can not be said that offence punishable under S. 465 of IPC was committed.”

However, in the present case offence is registered U/s 467 and therefore the said judgment /citation is not helpful to the applicant and so in view of the above observation, this is not the fit case to exercise discretion U/s 438 of Cr.P.C.

ORDER

This anticipatory bail application is rejected.

Pronounced in the open Court today, this 27th day of February, 2017.

Place: Ahmedabad
Date : 27 /2/2017

(Ashokkumar Chimanlal Joshi)
Sessions Judge,
District Court,Ahmedabad (Rural)
(Code : GJ00095)

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