

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 6075
of 2024**

=====

SHAH YASH PRAFULBHAI
Versus
STATE OF GUJARAT & ANR.

=====

Appearance:

MR HARSH M SURTI(3907) for the Applicant(s) No. 1
MR SIKANDER SAIYED(3458) for the Applicant(s) No. 1
MR M.NISAR VAIDHYA(3386) for the Respondent(s) No. 2
MR SOHAM JOSHI, APP for the Respondent(s) No. 1

=====

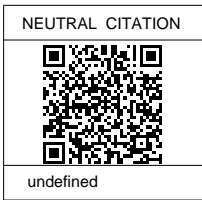
CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 06/05/2024

ORAL ORDER

1. By way of the present petition under Section 438 of the Code of Criminal Procedure, 1973, the petitioner has prayed to release him on anticipatory bail in case of his arrest in connection with the FIR registered as C.R.No.11216001240146 of 2024 registered with Adalaj Police Station, Gandhinagar.

2. Learned advocate for the petitioner submits that the petitioner is rather victim. He has been dragged by alleged victim of physical assault. It is submitted that apart from this aspect, it is relationship between two major persons whereby the victim is more than 30 years. It is submitted that FIR indicates that even after knowing fully well that the petitioner is married and has daughter, the victim again entered into physical relationship. Question of physical assault does not arise, nor is envisioned. It is submitted that victim - respondent no.2 has filed identical FIR

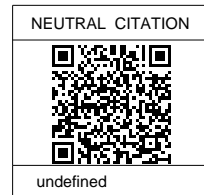


against different persons in State of Rajasthan, State of Uttar Pradesh and State of Andhra Pradesh and she is engaged in extorting persons after entering into physical relationship. It is submitted that the petitioner has been made accused in the offence under Immoral Trafficking Act registered at Mumbai.

2.1. In addition to above, it is submitted by learned advocate for the petitioner that the petitioner is ready and willing to cooperate investigation and available as and when called. It is submitted that since no antecedents are recorded against the petitioner, the petitioner may be granted anticipatory bail, more particularly when there is no offence of rape. Therefore, it is submitted that the petitioner may be enlarged on anticipatory bail by imposing suitable conditions.

3. Learned advocate appearing for respondent no.2 submits that after giving false promise of marriage, the petitioner entered into physical relationship with the victim and under false pretext of marriage, consent has been taken, which could not be considered as legal consent. It is submitted that though the petitioner is married and having child, the victim was taken into confidence and misused. Therefore, it is submitted not to grant anticipatory bail to the petitioner.

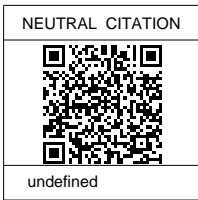
4. Learned APP for the respondent - State joining arguments of learned advocate for respondent no.2 submits that custodial interrogation of the petitioner is required in the present matter and therefore, present petition does not deserve consideration and requested to dismiss the petition.



5. Having heard the learned counsel for the parties and perusing the record of the case and taking into consideration the facts of the case, nature of allegations, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to exercise discretion in favour of the petitioner. I have considered the following aspects.

- (i) On plain reading of FIR, it appears that there was physical relationship between two persons.
- (ii) Moreover, the victim may be taken into confidence at the first instance under the pretext of marriage but the FIR indicates that even after victim came to know that the petitioner is married and having one child, she entered into physical relationship with the petitioner - accused. This aspect indicates that there was consensual relationship between two major persons.
- (iii) FIR also indicates that there is delay in lodging FIR, it is lodged almost after one year.
- (iv) Incident which started on 20.02.2023 assumes significance more particularly when for the same time period, another FIR was lodged by the victim in State of Rajasthan (page no.43).
- (v) More FIRs alleging act of rape has been filed by the victim in different States. She has also named accused in the offence under Immoral Trafficking Act .

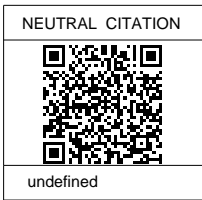
6. In the case of **Ansaar Mohammad v/s. State of Rajasthan [2022 (0) AIR (SC) 3478]**, the Hon'ble Apex Court has held in para 4 as under :-



"4. In view of the said fact, the complainant has been staying willingly with the appellant and had the relationship. Therefore, now if the relationship is not working out, the same cannot be a ground for lodging an FIR for the offence under Section 376(2)(n) IPC."

7. Having heard the learned advocate for the parties and perusing the investigation papers, it is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon'ble Apex Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided.

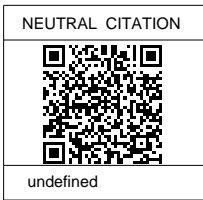
8. This Court while exercising discretion in favour of the petitioner has taken into consideration law laid down by the Apex Court in the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors. [2011] 1 SCC 694**, wherein the Hon'ble Apex Court reiterated the law laid down by the



Constitutional Bench in the the case of **Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab (1980) 2 SCC 665**. This Court has also taken into consideration law laid down in the case of **Sushila Agarwal v/s. State (NCT of Delhi [(2020) 5 SCC 1]**.

9. In the result, the present petition is allowed by directing that in the event of applicant herein being arrested pursuant to FIR registered as **C.R.No.11216001240146 of 2024 registered with Adalaj Police Station, Gandhinagar**, the petitioner shall be released on bail on furnishing a personal bond of Rs. 10,000/- (Rupees Ten Thousand only) with one surety of like amount on the following conditions that the petitioner :

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) shall remain present at concerned Police Station on **20.05.2024 and 21.05.2024** between 10.00 a.m. and 4.00 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 residence till the final disposal of the case till further orders;
- (f) shall not leave India without the permission of the concerned trial court and if having passport shall deposit the same before the concerned trial court



within a week;

10. If breach of any of the above conditions is committed by the petitioner, the concerned learned Judge will be free to take appropriate action in the matter. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions in accordance with law. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the petitioner on bail. Direct service is permitted.

SATISH

(J. C. DOSHI,J)