

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 6503  
of 2024**

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HITENDRABHAI MOHANBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR TEJAS BAROT, SR. ADVOCATE WITH MR ANUJ K TRIVEDI(6251) for  
the Applicant(s) No. 1

MR RAJ M BATADA(12875) for the Applicant(s) No. 1

MR VIRAT G POPAT(3710) for the Respondent(s) No. 1

MR SOHAM JOSHI, APP for the Respondent(s) No. 1

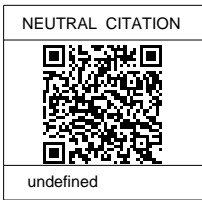
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**CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI****Date : 06/05/2024****ORAL ORDER**

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.11213030240072 of 2024 registered with Lodhika Police Station, Rajkot (Rural).

2. Facts of the case are as under :-

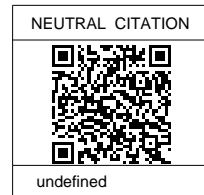
2.1. It is stated that the on 17th March, 2023, a case being C.R. No. 1119206023011 of 2023 was registered under Section 65(e), 116(b), 98(2), 81, and 83 of the Gujarat Prohibition Act, 1949, against one Swarupsinh Manjesinh Rajput, Narpatsinh Higorsinh and Dipakbhai Harjivanbhai Dhrangadhariya alias Munnabhai (Deceased), wherein the present Applicant is the Investigating Officer. In pursuance to the aforesaid investigation, the deceased was arrested on 5th July, 2023. It is



alleged by the Complainant that the Applicant demanded an amount of Rs.3 lakhs from the deceased on the pretext that if the deceased wishes not to be framed in the case, he would have to pay a sum of Rs.3 lakhs to the Applicant. It is further alleged that the said amount was paid by the deceased to the Applicant.

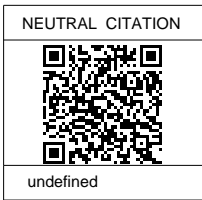
2.2. It is stated pursuant to the above-mentioned FIR, the deceased applied for regular bail before the Learned Session's Court Ahmedabad (Rural), which was rejected vide order dated 3rd August, 2023, passed in Criminal Miscellaneous Application No.267 of 2023. It is stated that on 9th August 2023, charge-sheet was filed against the deceased. Thereafter, the deceased was enlarged on regular bail by the Learned Sessions Court, Ahmedabad (Rural), vide order dated 24th August, 2023, passed in Criminal Miscellaneous Application No.330 of 2023.

2.3. It is stated that, on 10th February 2024, case being C.R. No. 11192060240070 of 2024 was registered under Section 65(a)(e), 116(b), 98(2) and 81 of the Gujarat Prohibition Act, 1949, against one Jetharam Khumaram Prajapati and Sarvandas Lumbdas Sadhu. It is further stated that the investigation of the said case is pending. It is alleged by complainant that applicant had threatened the deceased and demanded sum of Rs.10 lakhs under the pretext that if the deceased wishes not to be framed in the second case, then he would have to pay amount to the applicant. The deceased committed suicide on 23.02.2024 and wife of the deceased filed FIR on the same day alleging that deceased committed suicide on account of threats and mental pressure by the applicant. Hence, impugned FIR was filed.



3. Apart from placing written submissions on record, learned Senior Advocate Mr. Tejas Barot assisted by learned advocate Mr. Anuj Trivedi for the petitioner after taking this Court through records of present applications would submit that deceased was listed bootlegger. It is submitted that one FIR was filed against him on previous occasion and considering quantity of liquor involved in the FIR, concerned Court did not release him on bail till filing of charge-sheet. It is submitted that after filing of charge-sheet, deceased filed bail application through learned advocate Mr. Alpesh Solanki and he got bail. It is submitted that another FIR came to be filed and deceased was not named in the FIR. During investigation of the offence, the petitioner who is PSI and investigating the offence had apprehension that deceased was involved in the second FIR also and therefore, he was investigating the offence. It is submitted that deceased who was bootlegger could not face offence and committed suicide by making false video alleging that he has committed suicide on the ground that the petitioner is asking bribe of Rs. 10 lakhs for not arraigning deceased in offence. It is submitted that no FIR under Prevention of Corruption Act is filed.

3.1. It is submitted by learned Senior Advocate for the petitioner that though nothing has been mentioned in the FIR which link present petitioner with suicide committed by deceased, in the affidavit filed by Investigating Officer before the learned Trial Court, it is stated that there was talk between present petitioner and Mr. Alpesh Solanki. It is submitted that affidavit of Investigating Officer is taken as it is, except raising presumption about commission of offence, there is nothing on

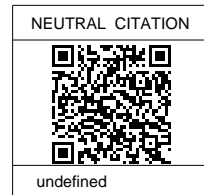


record which can prove abetment as required under section 107 of IPC being essential for offence under section 306 of IPC. It is submitted that the petitioner is PSI and he has blotless record. No departmental proceedings has ever taken place against him and having good track record. It is submitted that the petitioner is falsely implicated in the present FIR for diligent work he has carried till now. Therefore, it is submitted that the petitioner may be granted anticipatory bail.

3.2. Learned Senior Advocate for the petitioner would submit that the petitioner is available for investigation, he is permanent resident of Ahmedabad and working in police department. It is submitted that there is no past antecedent recorded against the petitioner. There is no flight-risk. It is also submitted that Mr.Alpesh Solanki against whom allegation of commission of offence has been made, has been granted anticipatory bail by the learned Sessions Court. Moreover, if we look at FIR allegation being presumptive is equal between present petitioner and Mr.Alpesh Solanki and in that circumstances principle of parity would be attracted in the present case.

3.3. To buttress above submissions, learned Senior Advocate for the petitioner has relied on following judgments :-

- (i) Naresh Kumar v/s. State of Harayana [(2004) 3 SCC 573] - para 23, 24 and 25.
- (ii) Mohit Singhal v/s. State of Uttarakhand [(2024) 1 SCC 417] - para 11.
- (iii) Arnab Manoranjan Goswami vs/ State of Maharashtra



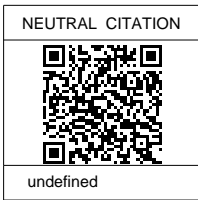
[(2021) 2 SCC 427] - para 48 to 62.

3.4. Upon above submissions, learned Senior Advocate Mr.Barot would submit to allow this pre-arrest bail application.

4. On the other hand, learned advocate Mr.Popat appearing for the complainant objected to grant of bail and would argue that it is incorrect to say that deceased was listed bootlegger. He would submit that only two offences under Prohibition Act is registered against the deceased and both of them are at the hands of the petitioners. It is further submitted that deceased has shot video before he died. It is submitted that video is addressed to higher police officers of the State, whereby, deceased has clearly alleged that petitioner was asking bribe of Rs.10 lakhs for not arraigning him in another offence. It is submitted that since video is electronic evidence, it could be treated as dying declaration under section 34 of the Evidence Act. It is submitted that the petitioner who is protector of society has played vital role. It is submitted that there was no other reason for deceased to commit suicide and asking Rs.10 lakhs by the petitioner from the deceased has goaded deceased to commit suicide. It is submitted that rest of the contentions can be examined during custodial interrogation. It is submitted that petitioner has failed to establish case for extraordinary relief.

4.1. Upon above submissions, it is submitted to dismiss the petition.

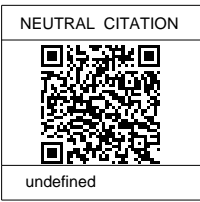
5. Learned APP while joining arguments of learned advocate



Mr. Popat would submit that the petitioner is PSI. He is well versed with investigation to be carried out. Notice was issued on 28.03.2024 to the petitioner to remain present for investigation but the petitioner did not remain present and did not cooperate in investigation. It is submitted that even thereafter, he was called to join duty for election time period, he did not turn up. The petitioner is on unauthorized leave. These aspects indicate that the petitioner is on the run. Learned APP would submit that Investigating Officer who is investigating second offence under the Prohibition Act, whereby, it is alleged that petitioner has demanded bribe, recorded statement of Mr. Nilesh Ramani. Case diary indicates that the petitioner has visited farm of Mr. Nilesh Ramani. The petitioner is PSI of Viramgam and visited place at Rajkot, where one Jagesh Boghra is involved in the entire issue. It is submitted that video which was lastly recorded by the deceased indicates that the petitioner had demanded bribe from the petitioner. The prosecution is awaiting FSL report. It is also submitted that there is a chance that offence under Prevention of Corruption Act could be added in the offence.

5.1. Making above submissions, it is submitted not to grant anticipatory bail to the petitioner.

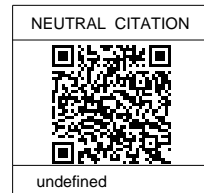
6. Having heard learned advocates for the parties, at the outset, what could be noticed that the petitioner is PSI serving with Viramgam Police Station. State and police are meant to serve and protect citizens. Allegations indicate that petitioner who is PSI having duty to protect citizens has become perpetrator. Record indicates that the petitioner who was



investigating second offence registered under the Prohibition Act had asked for money from the deceased. At this juncture, if we take notice of the video lastly recorded by deceased, whereby, it is clearly stated that deceased has committed suicide for the reason that demand of Rs.10 lakhs has been made by the petitioner. This video shot lastly by deceased does not mention any other reason for committing suicide. Prima facie, this video can be treated as dying declaration. The petitioner is clearly named therein. It is settled that while deciding bail application, detailed discussion on merit and appreciation of evidence would not be permissible and detail discussion on merits should be avoided. Prima facie what emerges from record that the petitioner whose duty is to protect citizen has become perpetrator. Apart from offence under section 306 of IPC, there is element of demand of money from deceased by the petitioner being public servant. Prima facie, there is no reason to disbelieve video lastly recorded by the deceased. The petitioner has failed to make out case for grant of anticipatory bail.

7. At this juncture, I may refer to judgment of Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors.** [2011] 1 SCC 694. In para 111 and 112, the Hon'ble Apex Court has held as under :-

*"111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant*

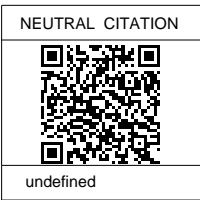


*or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia's case (supra) that the High Court or the Court of Sessions to exercise their jurisdiction under [section 438 Cr.P.C.](#) by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.*

*112.The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:*

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- iii. The possibility of the applicant to flee from justice;*
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.*
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and*





*full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*

*ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*

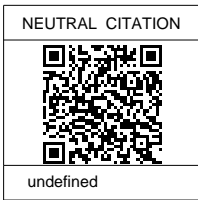
*x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."*

8. I may also refer to judgment of Hon'ble Apex Court in the case of **Jaiprakash v/s. State of Bihar [2012 (4) SCC 379]**. In para 13 and 18, it has been held as under :-

*"13. There is no substantial difference between Sections 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.*

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*18. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See: D.K. Ganesh Babu v. P.T. Manokaran & Ors., (2007) 4 SCC 434; State of Maharashtra & Anr. v. Mohd. Sajid Husain Mohd. S. Husain & Ors., (2008) 1 SCC 213; and Union of India v. Padam Narain Aggarwal & Ors., (2008) 13 SCC 305)."*



9. The object of anticipatory bail is that person should not be harassed or humiliated in order to satisfy personal vendetta of the complainant. In deciding the anticipatory bail, delicate balance between personal liberty and societal interest has to be maintained. In present case, societal interest weigh higher than the personal liberty. The petitioner is serving PSI. Allegations levelled against him is that he has demanded Rs.10 lakhs from the deceased for not arraigning him in the offence. If in this allegation, the petitioner is granted anticipatory bail, it will not only adversely effect the societal interest but also the investigation of the offence. Possibility of tempering with the evidence cannot be ruled out, as petitioner is serving as PSI. Record indicates that investigation is at crucial stage, and it will be adversely affected if petitioner is granted anticipatory bail.

10. The judgments relied by learned Senior Advocate for the petitioner would not help the petitioner at this juncture while deciding bail application. Prima facie there is link between the petitioner and suicide committed by deceased and this link is by way of video recorded by deceased before committing suicide.

11. In the case of **P. Chidambaram V/s Directorate of Enforcement** reported in **AIR 2019 SC 4198**, wherein the Hon'ble Supreme Court has held held as follows:

*"The legislative intent behind the introduction of Section 438 CrPC is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal*



*offence is not just an offence against an individual rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights – safeguarding the personal liberty of an individual and the societal interest.*

*Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. It may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In this view, it cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant/applicant under Article 21 of the Constitution of India.*

*Consequently, power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the*



*applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Section 438 CrPC is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. Anticipatory bail is to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy".*

12. The petitioner has failed to make out case to exercise extraordinary jurisdiction to grant anticipatory bail. Present petition fails and stands dismissed.

SATISH

(J. C. DOSHI,J)