**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 7496  
of 2024**

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BABUBHAI SAKALABHAI DAMOR  
Versus  
STATE OF GUJARAT

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Appearance:

JUCKY LUCKY CHAN(8033) for the Applicant(s) No. 1  
MS PARUL M MAHIDA(11694) for the Applicant(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 : 23/04/2024****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 I-C.R.No.11821030240366 of 2024 registered with Jhalod Police Station, Dahod.
2. Learned advocate for the petitioner submits that considering the nature of allegations, role attributed to the petitioner, the petitioner may be enlarged on anticipatory bail by imposing suitable conditions.
3. Learned Additional Public Prosecutor appearing on behalf of the respondent-State has opposed grant of anticipatory bail looking to the nature and gravity of the offence.
4. Heard the learned Advocates for the respective parties and perused the papers.



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) It appears that there is no instigation on the part of the petitioner.
- (ii) There is no suicide note or dying declaration.
- (iii) No ingredients of section 107 of IPC is made out to constitute offence under section 306 of IPC.
- (iv) There is no overtact or omission of act which is proximity to commit suicide.
- (v) Learned advocate for the petitioner submits that the petitioner is ready and willing to abide any conditions which may be imposed by this Court.

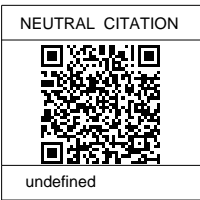
6. In the case of **Mariano Anto Bruno v/s. The Inspector of Police [2022 (14) Scale 671]**, the Hon'ble Apex Court has held in para 36 and 38 has held as under :-

*"36. To convict a person under Section 306 IPC, there has to be clear mens rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide finding no other option and the act must be such reflecting intention of the accused to push deceased into such a position that he commits suicide. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and Appellant No. 1 abetted the commission of suicide of the deceased. In the present case, both the elements are absent.*



*38. This Court has time and again reiterated that before convicting an accused under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable."*

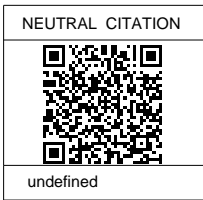
7. It is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon'ble Apex Court on the point. It is well settled that, among other circumstances, the factors to be borne in 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 petitioner herein being arrested pursuant to FIR registered as **I-C.R.No.11821030240366 of 2024 registered with Jhalod Police Station, Dahod**, 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 **01.05.2024 and 02.05.2024** 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.

11. Direct service is permitted.

SATISH

**(J. C. DOSHI,J)**