



## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO.  
8899 of 2024**

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UMESH NARAYANBHAI PATEL  
Versus  
STATE OF GUJARAT

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Appearance:

MR JAYDEEP H SINDHI(9585) for the Applicant(s) No. 1  
MS DIVYANGNA JHALA, ADDL. PUBLIC PROSECUTOR for the  
Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

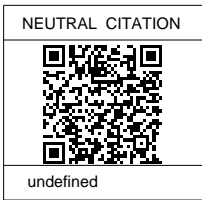
**Date : 14/06/2024**

### ORAL ORDER

RULE. Learned APP waives service of notice of Rule on behalf of the respondent – State of Gujarat.

[1.0] By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant accused has prayed to release him on anticipatory bail in the event of his arrest in connection with the FIR being **C.R. No.11214042231055 of 2023 dated 27.07.2023** registered with **Olpad Police Station, Surat Rural** for the offence under Sections 65-A, 65(e), 81, 98(2) and 116-B of the Prohibition Act.

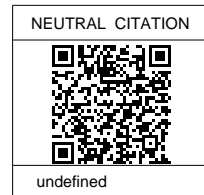
[2.0] Learned advocate for the applicant submits that the applicant has nothing to do with the offence and he has been falsely enroped in the offence and there is not an iota of evidence which can implicate the present applicant in the alleged offence. He is shown as wanted accused in the FIR but no specific role has been



attributed to the present applicant. Further, applicant is not having any past antecedent. In the FIR it is alleged that the present applicant was proposed receiver of alleged 4383 bottles of Indian Made Liquor worth Rs.3,62,892/- but nothing is recovered from the conscious possession of the present applicant and even the applicant is not found at the spot. Hence, nothing remains to be recovered or discovered from the present applicant and therefore, custodial interrogation at this stage is not necessary. Besides, the applicant is available during the course of investigation and will not flee from justice. In view of the above, the applicant may be granted anticipatory bail.

[3.0] Learned Additional Public Prosecutor appearing on behalf of the respondent – State has opposed grant of anticipatory bail and stated that present applicant's name is mentioned in the FIR as wanted accused and applicant-accused has committed offence against the society and even in past also he has indulged in such activity. Thus, *prima facie* involvement of applicant is proved and hence, as custodial interrogation of the applicant is required, he has requested to dismiss the present application.

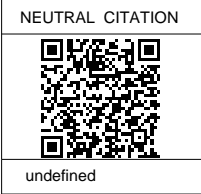
[4.0] Having heard the learned advocate for the parties and perusing the investigation papers, it is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon'ble Apex Court 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. I have considered the following aspects.

- (1) Applicant is shown as wanted accused in the FIR and is attributed with role of proposed receiver but there is no iota of evidence in this regard to substantiate the said allegation;
- (2) So far as past antecedent is concerned, present FIR is filed in the year 2023 and even subsequently nothing is found from the conscious possession of the present applicant;
- (3) The allegation is that he was the proposed receiver but nothing is recovered or discovered from the present applicant as liquor in question is already recovered from the conscious possession of the co-accused;
- (4) Nothing is required to be recovered or discovered from the applicant.

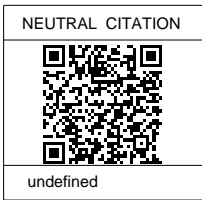
[5.0] Considering the aforesaid aspects and the law laid down by the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors.** reported in **(2011) 1 SCC 6941**, wherein the Hon'ble Apex Court reiterated the law laid



down by the Constitution Bench in the case of **Shri Gurubaksh Singh Sibbia & Ors.** reported in **(1980) 2 SCC 665** and also the decision in the case of **Sushila Aggarwal v. State (NCT of Delhi)** reported in **(2020) 5 SCC 1**, I am inclined to allow the present application.

[6.0] In the result, the present application is allowed by directing that in the event of applicant herein being arrested in connection with the FIR being **C.R. No.11214042231055 of 2023 dated 27.07.2023** registered with **Olpad Police Station, Surat Rural**, the applicant 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 he:

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) **shall remain present at the concerned Police Station on 20/06/2024 between 11.00 a.m. and 2.00 p.m. and the IO shall ensure that no unnecessary harassment or inconvenience is caused to the applicant;**
- (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 his residence till the final disposal of the case till further orders;
- (f) shall not leave India without the permission of the



Court and if having passport shall deposit the same before the Trial Court within a week; and

[7.0] 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. It is clarified that the applicant, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

[8.0] At the trial, the Trial Court shall not be influenced by the *prima facie* observations made by this Court while enlarging the applicant on bail.

[9.0] Rule is made absolute to the aforesaid extent. Application is disposed of accordingly. Direct service is permitted.

**(HASMUKH D. SUTHAR, J.)**

*Ajay*