



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 9157
of 2024**

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HASAN @ LALU BASIR CHAND & ANR.
Versus
STATE OF GUJARAT

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Appearance:

K R PATEL(7601) for the Applicant(s) No. 1,2

MR HK PATEL APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI

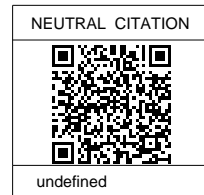
Date : 09/05/2024

ORAL ORDER

Heard learned Advocate Mr.Sheth for Mr.Patel, learned advocate for the petitioners and learned APP Mr.H K Patel, for respondent – State.

2. 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 vide C.R. No. Part 'B' - 11214021240310/2024 for the offences alleged to have been committed and punishable under sections 6(A)(B) and 8(2)(4) of The Gujarat Animal Preservation (Amendment) Act, 2017 with Kosamba Police Station, District: Surat (Rural).

3. It is the case of the prosecution in FIR that the complainant, namely, Nileshbhai Ashokbhai Shimpi is an Asst. Head Constable at Kosamba Police Station, Surat who was in patrolling with other police personnel when he received a phone call from one police constable Rajviben who informed that telephonic vardhi is received that the applicants and another

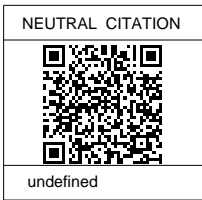


accused and others are slaughtering cow and then raid carried out and it was found that one cow wear slaughtered from the neck part and was lying in the center of house and blood was lying in one vessel. It is further alleged that 6 gunny bags and 1 polythene bag were lying near the cow and face of cow in slaughter position was found from 1 gunny bag and from other 5 gunny bags, cow beef to the extent of 165/-kgs, was found and 25/- kg. cow beef was found from 1 polythene bag. It is further alleged that 2 big knives were also recovered with certain other muddamals and everything was seized and hence, upon the aforesaid allegations, a police complaint is registered.

4. Upon filing of the FIR, the petitioners have preferred anticipatory bail application before the learned Court below which came to be rejected and thus present application is filed seeking anticipatory bail.

5. Learned advocate for the petitioners would submit that the place where from the cow meat was found does not belong to the petitioners as the address of the petitioners is mentioned in the Aadhar Card is different one and therefore there is no connection of the petitioners with the alleged cow meat. He would further submit that petitioners are not in any way connected with the slaughtering of the cow. He would further submit that petitioners would be readily available for investigation and there is no flight risk if the petitioners are enlarged on anticipatory bail.

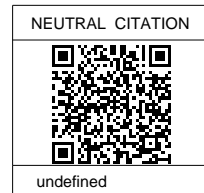
5. *Per contra*, learned APP objecting to grant of this application firstly would submit that total 190 Kg of cow meet



was found from the spot and petitioners are found to have been involved in the offence of cow slaughtering and they are in hand in gloves with each other and doing the business without there being any licence and in such circumstances the petitioners may not be enlarged on anticipatory bail.

6. Having heard the learned advocates appearing for the rival sides, needless to say that anticipatory bail is the extraordinary relief which can be granted very cautiously. What appears from the record and FIR that on the basis of the secret tip received by the police party mentioning the name of the petitioner specifically stating that petitioners were slaughtering the cow at particular place and having reached at the spot, the police found one white-black colour cow was slaughtered lying there; blood stains were also found and petitioners have run away from the spot. To be noted that, most of the skin of the cow was removed from its body and found at the spot and petitioners were run away found at the spot where the alleged muddamal was found. The argument of the learned advocate for the petitioners that they are not residing at the address wherefrom muddamal was found as the residential address of the petitioners are different in the Aadhar Card would not helpful to the petitioners because this sole address as mentioned in the Aadhar Card could not be taken into consideration to believe that accused was not present at the spot. From the FIR, it reveals that cow was slaughtered and bloodbath was found and skin of the cow was removed from most of the parts of the body. Thus, the prima facie, involvement of the petitioners are found from the FIR.

7. In case of **Bhadresh Bipinbhai Sheth Vs. State of Gujarat**



reported in AIR 2015 SC 3090, the Hon'ble Apex Court delineated the following factors and parameters that needs to be taken into consideration while dealing with the anticipatory bail.

“(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) 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;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

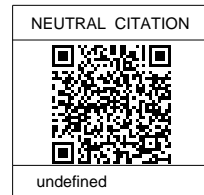
(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) 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 the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;

(h) 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 free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

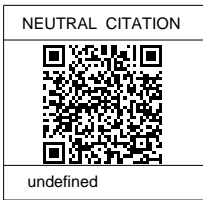
(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled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



8. In case of **Pratibha Manchanda and another Vs. State of Haryana and another reported in (2023) 8 SCC 181**, the Hon'ble Apex Court in para 21, observed as under:-

“21. The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free binvestigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome.”

9. Ordinarily, arrest is a part of the procedure of the investigation to secure not only the presence of the accused, but several other purposes. Power u/s 438 of the Code is an extraordinary power and the same has to be exercise sparingly in appropriate and fit case. This privilege should be extended only in exceptional cases. It is a judicial discretion conferred upon the court, and it is to be properly exercised after application of mind as to the nature and gravity of the accusation, possibility of the applicant fleeing from 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. Anticipatory bail is not 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. Striking of balance of investigation and personal liberty is another factor needs to be properly weigh. The fact of the case



demands custodial interrogation of the petitioner. Under the circumstances, the petitioners are not entitled for anticipatory bail.

10. For the foregoing reasons, present petition fails and stands dismissed.

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(J. C. DOSHI,J)