

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 4968 of 2020****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE B.N. KARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

GAURAVKUMAR SUDARSHANKUMAR ARORA
Versus
STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA(437) for the Applicant(s) No. 1

MS BELA A PRAJAPATI(1946) for the Applicant(s) No. 1

MS KRINA CALLA, APP for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE B.N. KARIA**Date : 14/10/2020****CAV JUDGMENT**

By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, present applicant has prayed to release him on anticipatory bail in case of his arrest

in connection with the FIR registered as C.R No.I-1119400200002 of 2020 before ACB Police Station, District-Surendranagar for the offence punishable under Sections 12, 7(a) and 13(2) of the Prevention of Corruption Act, 1988.

The brief facts are as under:

That applicant has done his graduation in Bachelor of Engineering (Electronics and Communications) and is appointed as the Inspector in the office of the Central G.S.T. at Surendranagar and is serving in the said Department since the year of 2016. That a FIR is lodged by the complainant-Mr. Narendrasinh Narsansinh Lakum on 07.02.2020 alleging that he is having a shop in the name of Bhavani Trading Company, which is situated at village Chuda and another shop under the name and style of Patel Agency at Limdi and third shop is also owned by the first informant, which is in the name of his son under the name and style of Bhaani Axi Business at Borna. That first informant is selling grocery items, building materials and tobacco. That on 21.01.2020, the accused Nos.1 and 2 had visited the shop of the first informant situated at village Chuda

and Borna and had inspected the shop and godown. |That aforesaid accused informed the first informant that they were keeping the goods in the godown situated at Borna without their permission and, therefore, has to deposit an amount of penalty to the tune of Rs.2.50 Lakhs for the shop situated at village Borna. That in the shop situated at Chuda, it was found that GST Number was not reflected properly in the board, and therefore, it was informed that the complainant has to pay penalty of Rs.2.50 Lakhs. That in all the first informant had to pay penalty of Rs.5 Lakhs. That first informant was called with the accounts at the GST office, and therefore, first informant had visited the office of the G.S.T. on 06.02.2020 with his accountant with necessary documents. That the accused Nos.1 and 2 had talked with the first informant and it was made to understand that if any legal formalities are not to be done, first informant would pay sum of Rs.75,000/- to the accused persons on 07.02.2020. That first informant did not want to pay the amount of bribe and, therefore, lodged a complaint with the ACB Police Station, Surendranagar on 07.02.2020

bearing FIR no. C.R No.I-1119400200002 of 2020. That the applicant had to attend his friend Mr. Naraj Prasad's marriage ceremony, which was fixed on 04.02.2020. The applicant did not attend marriage ceremony, but attended the reception which was fixed on 07.02.2020. The marriage ceremony and reception was at Patna. Therefore, the applicant and his friend Mr. Kamlesh Parmar booked the ticket in Spice Jet Airlines on 01.02.2020. The applicant was to travel on 07.02.2020 by flight No.SG 954, departing from Ahmedabad at 11.50 a.m. That the applicant has attended the reception of his friend-Niravkumar Arora on 07.02.2020. That the applicant was apprehending his arrest in connection with the aforesaid FIR and, therefore, preferred an application for anticipatory bail before the learned District Judge and Special Judge (Atrocity), Surendranagar, being Criminal Misc. Application No.149 of 2020. That the co-accused Mr.Rajivkumar Raviraj and Mr.Ravi Bhavanishanker Joshi were arrested in connection with the aforesaid FIR, and therefore, they preferred application for regular bail before learned District and Sessions Judge,

Surendranagar, being Criminal Misc. Application No.148 of 2020. The learned Additional District Judge and Special Judge (Atrocity) vide order dated 29.02.2020 rejected bail application qua Mr. Rajivkumar Raviraj. So far as other co-accused Mr. Ravi Bhavanishanker Joshi is concerned, learned Judge allowed bail application qua him. That, learned District Judge and Special Judge (Atrocity), Surendranagar vide order dated 29.02.2020 rejected the application preferred by the applicant under Section 438 of the Criminal Procedure Code and thus, present application has been filed by the present applicant.

Heard learned advocate for the applicant and learned APP for the respondent-State.

Learned advocate for the applicant submits that the applicant is innocent person. The applicant has not committed any offence as alleged. There is no prima facie case against present applicant, so as to implicate him in commission of the alleged offence. That it is alleged in the FIR that the applicant and the other co-accused had a talk with the first informant

and it was agreed that the first informant would pay a sum of Rs.75,000/- to the accused No.3 and since the first informant did not want to pay said amount, present criminal complaint is lodged. There is no iota of allegation that the applicant demanded money from the first informant or applicant accepted money from the first informant. That the accused No.1 i.e. Rajiv Hansraj Yadav and Mr. Ravi Bhavansinh Joshi-accused No.3 accepted the money from the complainant. Therefore, the ingredients of charging Sections are not satisfied. That the allegations made in the FIR are in respect of the offence punishable under Section 12, 7(a) and 13(2) of the Prevention of Corruption Act,1988 (for short “the Act”). The co-accused of the offence had approached this Court by filing an application for regular bail being Criminal Misc. Application No.5446 of 2020 which was withdrawn by this Court (Coram: Hon'ble Mr. Justice V.P. Patel) vide order dated 17.04.2020. It is submitted that the applicant has not committed any offence punishable under Sections 7(a), 12 or 13(2) of the Act as alleged in the FIR. That the applicant has

been falsely roped in the commission of the alleged offence. That even at the cost of repetition the applicant submitted that applicant was not in Surendranagar town when the alleged incident had occurred. The applicant was present at Patna. Therefore, the entire FIR lodged against the applicant, implicating him as accused, is nothing but false and vexatious story laid down with ulterior motive and the same cannot be believed for prosecuting the applicant. That applicant is innocent person and prima facie there is no case against the present applicant so as to implicate him in commission of the alleged offences. That in the complaint, first informant had a talk with Mr.Yadav and Mr.Veram. Present applicant is not Verma. That applicant has falsely implicated in commission of the alleged offence and therefore, it is requested by learned advocate for the applicant to enlarge the applicant on bail in the event of his arrest.

Learned APP has strongly opposed the arguments of the applicant and argued that the prosecution has produced investigation papers for perusal of this Court. It is argued that

from the investigation papers, it is clearly revealed that first informant had a talk with the present applicant Mr.Arora and co-accused Mr. Rajiv Yadav. He is not Verma but he is Mr.Gaurav Arora. Learned APP has invited attention of this Court in respect of transcript scrip of applicant's talk between the first informant and the present applicant and argued that it clearly supports the prosecution case demanding illegal gratification of money by the present applicant for avoiding legal procedure of alleged irregularity committed by the first informant in connection with GST. That applicant being a public servant serving as GST Inspector, Class-II in the office of Central GST at Surendranagar has made clear demand of illegal gratification of money from the first informant alongwith the co-accused and has committed the offence. The amount of illegal gratification was also recovered from the envelope in his office at the instance of accused No.3. As applicant is involved in serious offence, it was requested by learned APP to dismiss present application.

From the record, it appears that one Shri Narendrasinh

Narsangbhai Nakum, aged about 48 years, occupation: Business and agricultural, residing at Chuda, Nearby Pipaliya Well, Ta: Chuda originally residing at Borna, Ta: Limbdi, Dist: Surendranagar lodged a complaint against three accused persons namely (1) Rajiv Hansraj Yadav, GST Inspector (2) Gaurav Arora, GST Inspector and (3) Ravibhai Bhavanishankar Joshi, contractual basis peon, Central GST office.

As per the contents of the complaint, complainant was running his business in the name and style of Bhavani Trading Company at village Chuda and running his another shop under the name and style of Patel Agency at Limbadi and his son was running his firm under the name and style of Bhavani Exhibition at Borna. He was mainly engaged in the business of grocery, cattle food, building materials and goods of tobacco. On 28.01.2020, accused no. 1 and 2 visited the shop of the applicant at Chuda and Borna and thereafter they went to goods godown of the complainant at Borna. Complainant was informed by them that without their permission, godown was

kept by the complainant at Borna, and therefore, he was liable to pay amount of penalty to the tune of Rs. 2,50,000/-. They further informed the complainant that in the sign board on the shop at Chuda, GST number was not clearly shown and complainant was further liable to pay the penalty of Rs. 2,50,000/- means in all total Rs. 5 lacs was to be paid by the complainant. Thereafter, he was called by the accused no.1 and 2 with his account of business in the GST Office in person. The complainant as well as his accountant, on 6th February 2020, paid their visit to the office of the accused no.1 and 2 with the papers of account. During the discussion with the accused no.1 and 2, they demanded Rs.2,50,000/- from the complainant with a view to avoid and stop the legal proceedings against the complainant. After discussion with the accused no.1 and 2, it was decided to pay Rs.75,000/- on the very same day i.e. on 07.02.2020. As the complainant was not happy to pay such amount of illegal gratification demanded by the accused no. 1 and 2, on the very same day ie., on 07.02.2020, complainant approached the office of ACB and a

trap was arranged on the basis of the complaint received from the complainant. As discussion was made with the accused no.1 and complainant demanding amount of illegal gratification from him and to pay the amount to the accused no.3. Amount of illegal gratification was accepted by the accused no.3. Accused nos.1 and 3 were caught by the raiding party as they were in collusion in commission of offence and as were connected in commission of offence, a complaint was registered against them. Video recording was used in the entire proceedings.

From the complaint, it appears that present applicant was referred as Shri Verma, officer. From the statements of the prosecution witnesses recorded by the investigation officer, during the course of investigation, it appears that present applicant was not Shri Verma but he was Shri Arora and his correct name is shown in column no.7 of the complainant. However, in the description of the complaint, he was referred as Shri Verma, Officer. Amount of GST if applicable would be deposited through bank only and no amount in cash would

require to be demanded or to be paid. If we refer the panchnama drawn during the course of investigation, it also supports the case of the prosecution that presence of the present applicant was also found as well as participation in the offence.

If we refer the transcript made between the complainant and the present applicant/accused, demand of illegal gratification was clearly made by the present applicant.

This Court, in similar issue, in case of **Rajesh Chandulal Shah versus State of Gujarat in Criminal Misc. Application No. 9278 of 2018**, it is held in para 8 that;

“Grant of anticipatory bail in corruption matters involving public servants should be in the rarest of rare cases. It is a settled position of law that 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. It is only if the court is convinced, on the basis of the materials on record, that a public servant has been falsely involved or that the allegations of demand or acceptance of illegal gratification are with an oblique motive or tainted with malafides, that the court may consider to protect such public servant by grant of anticipatory bail. Why should a corrupt public servant, who is not only a menace to the society but a potential threat so far as the progress of the country is concerned, be shown any indulgence by a court of law by granting him protection in the form of

an anticipatory bail.”

In another matter i.e., **Criminal Misc. Application No. 5555 of 2017**, this Court has in a similar issue, considering the case of *Siddhram Stalingapa Mhetre v. State of Maharashtra*, reported in 2011(1) SCC 694, this Court has observed as under:

*“It could hardly be said that a special case is made out by the applicant in which he could successfully plead for anticipatory bail. One of the factors indicated in the *Siddhram Stalingappa Mhetre (supra)*, amongst other considerations, is the magnitude of the offence. It was in a government project by a government company set up for public utility purpose of Metro Project that the accused persons including the applicant herein acted in the manner and the modus highlighted above to defalcate the money by fabricating the documents. The applicant could be said to be holding a position in the hierarchy of the company where his role could at all not be discarded, rather the allegations made in the F.I.R. clearly attracted and attributed the role independent in itself. The exact role of the applicant-accused was discernible from the allegations in F.I.R. and attendant facts and circumstance.*

The alleged criminal conduct has resulted into loss to public exchequer and the crime allegedly committed by the applicant has to be public money dimension and consideration of societal interest at large, therefore the nature and gravity of accusation is serious enough. Looking to the gravity of the alleged crime and the severity

of punishment, the powers under Section 438 are not liable to be exercised in favour of the applicant. As discussed above, nor it could be said that the investigation would not require the applicant for the purpose of interrogation. The applicant is described as non-cooperative in the investigation by the investigating officer as per the report mentioned hereinabove.

The principles laid down in Siddhram Stalingappa Mhetre (supra) came to be relied on by the Supreme Court in Jai Prakash Singh v. State of Bihar [(2012) 4 SCC 379] and it was observed by the Supreme Court as under.

"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 therefor. 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"

Present applicant has been charged with the offence under the Prevention of Corruption Act 1988 and the investigation is at a very crucial stage. No exceptional or special circumstances have been pointed out by the learned applicant for the applicant for the purpose of grant of anticipatory bail.

The presumption of innocence cannot be sole consideration of the grant of bail as requested.

While approving the judgment of **Subramanian Swamy v. Director, Central Bureau of Investigation and Anr.**, (2014)8 SCC 682, rendered by another Constitution Bench in Manoj Narula's case, a Constitution Bench of the Supreme Court, dealing with rampant corruption, has observed as under:-

"17. Recently, in *Subramanian Swamy v. CBI* (2014) 8 SCC 682, the Constitution Bench, speaking through R.M. Lodha, C.J., while declaring Section 6-A of the Delhi Special Police Establishment Act, 1946, which was inserted by Act 45 of 2003, as unconstitutional, has opined that: (SCC pp. 725-26, para 59)

"59. It seems to us that classification which is made in Section 6-A on the basis of status in the government service is not permissible under Article 14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the PC Act, 1988. Can there be sound differentiation between corrupt public servants based on their status? Surely not, because irrespective of their status or position, corrupt public servants are corrupters of public power. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made between public servants against whom there are allegations amounting to an offence under the PC Act, 1988."

And thereafter, the larger Bench further said: (SCC p. 726, para 60)

"60. Corruption is an enemy of the nation and tracking down

corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences."

In view of the aforesaid discussion, this application fails and is hereby **rejected**. Rule is discharged.

Ad-interim protection earlier granted stands vacated forthwith.

(B.N. KARIA, J)

Further Order:

At this stage, the learned advocate for the applicant made a request that the interim protection earlier granted on 06.03.2020 may be extended for reasonable time for approaching the Higher forum. Considering the request made by learned advocate for the applicant, let interim protection be continued for the period of one month for challenging the order of this court by the applicant before the Higher Forum.

(B.N. KARIA, J)