

**Criminal Misc. Application No. 5249 of 2018**  
**Chandubhai Tejaram Thakkar v. State of Gujarat**

**2018 SCC OnLine Guj 1020**

**In the High Court of Gujarat at Ahmedabad**  
(BEFORE J.B. PARDIWALA, J.)

Chandubhai Tejaram Thakkar ..... Applicant

v.

State of Gujarat ..... Respondent

Criminal Misc. Application No. 5249 of 2018

Decided on March 7, 2018

Appearance:

Mr. Hriday Buch(2372) for the Petitioner(s) No. 1

Ms. Moxa Thakkar, APP (2) for the Respondent(s) No. 1

The Order of the Court was delivered by

**J.B. PARDIWALA, J.:**— 1 Rule returnable forthwith. Ms. Moxa Thakkar, the learned APP waives service of notice of rule for and on behalf of the respondent-State.

**2.** By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant-original accused has prayed to release him on anticipatory bail in the event of his arrest in connection with the First Information Report being C.R. No.I-8 of 2018 registered with the Bhabhar Police Station, District: Banaskantha of the offence punishable under Sections 323, 325, 395 and 506(2) of the Indian Penal Code and Section 135 of the Gujarat Police Act.

**3.** The learned advocate appearing on behalf of the applicant would submit that considering the nature of the offence, the applicant may be enlarged on anticipatory bail by imposing suitable conditions.

**4.** On the other hand, the learned APP appearing on behalf of the respondent-State has opposed this application for grant of anticipatory bail to the applicant looking to the nature and gravity of the offence.

**5.** I have heard the learned advocates appearing for the respective parties, perused the investigation papers and have also taken into consideration the facts of the case, nature of the allegations, role attributed to the applicant-accused, and without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicant. The following aspects are taken into consideration:

[1] Even if I accept the entire case put up by the first informant as it is or believe the same to be true, none of the ingredients to constitute the offence of dacoity are spelt out. The case does not appear to be one of dacoity.

[2] If Section 395 of the I.P.C. is taken out, then the other offences of the I.P.C. are Sections 323 and 325.

**6.** This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of *Siddharam Satlingappa Mhetre v. State of Maharashtra*, reported in (2011) 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitutional Bench in the case of *Shri Gurubaksh Singh Sibbia*, reported in (1980) 2 SCC 665.

**7.** The learned advocate for the applicant, on instructions, states that the applicant is ready and willing to abide by all the conditions, including impositions of conditions

with regard to the powers of the Investigating Agency to file an application before the competent court for his remand. He would further submit that upon filing of such application by the Investigating Agency, the right of the applicant-accused to oppose such application on merits may be kept open.

**8.** In the result, the present application is allowed by directing that in the event of arrest of the applicant herein in connection with the First Information Report being being **C.R. No.I-8 of 2018 registered with the Bhabhar Police Station, District: Banaskantha**, the applicant shall be released on bail on his furnishing a personal bond of Rs. 10,000/- (Rupees ten thousand only) with one surety of the like amount on the following conditions that he shall:

- (a) cooperate with the investigation and make himself available for interrogation whenever required;
- (b) remain present at the concerned Police Station on **9<sup>th</sup> March 2018 between 11.00 a.m. and 2.00 p.m.;**
- (c) not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/them from disclosing such facts to the court or to any police officer;
- (d) 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) 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) 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
- (g) it would be open to the Investigating Officer to file an application for remand if he considers it just and proper and the learned Magistrate would decide the same on merits;

**9.** 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. This is, however, without prejudice to the rights of the accused to seek stay against an order of remand if, ultimately, granted, and the powers of the learned Magistrate to consider such a request in accordance with law.

**10.** 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 the other conditions of this anticipatory bail order.

**11.** 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. Rule is made absolute. Direct service is permitted.

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