

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC. APPLICATION NO. 6233 of 2020****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA**

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 ?	

ARCHANA MUKESH RAVAL
Versus
STATE OF GUJARAT

Appearance:
MR HRIDAY BUCH(2372) for the Applicant
MR MANAN SHAH APP for the Respondent

CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA**Date : 07/03/2022****ORAL JUDGMENT**

- Apprehending the arrest, the applicant herein seeks anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973, in connection with the FIR being **C.R. No. 11205043200259 of 2020 registered with Bhuj City “B” Division Police Station, Dist.: Bhuj**, for the offences punishable under Sections 384, 114, 294B

and 506(2) of IPC and under Sections 7, 12, 13(1)(a) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. The facts and circumstances giving rise to filing of present application is that, the applicant being public servant, has been charged with the offence under Section 7, 13, 13(1)(a) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act' for short).

- 2.1 The applicant herein presently under suspension, was serving as Police Sub-Inspector, Mahila Police Station, City: Bhuj, Dist.: Kutchh. On 04.03.2020, the informant Rohan Nipanikar and his friends were on long drive and when they were reached on University Road, Bhuj, his car was intercepted by driver of the applicant herein and beneath the driver seat, one transparent polythene phone bag filled with green colour leaves was found. The applicant herein was in official car – Bolero Jeep. The driver of the applicant suspects that the material found from the polythene bag is narcotic substance. He told to the complainant that you have committed an offence under the provisions of NDPS Act. Driver Haribhai Gadhavi, take a seat in the informant car and directed the friends of the informant to sit in a police jeep. The driver – Haribhai, demanded Rs.1,00,000/- from the informant for settlement, otherwise, he threatened the complainant to book in the false case under the NDPS Act and after negotiations, the deal was finalized at Rs.50,000/-. The informant, managed Rs.15,000/- from his friend, who had credited the amount in the account of informant. The driver, the applicant herein, the informant and his friends were taken to ATM HDFC Bank, Jubilee Circle in the Bolero Jeep, where, the informant withdraw the amount of Rs.15,000/- and given to the driver in the Jeep itself. The driver -

accused in the presence of applicant asked for the remaining amount and at that time, the applicant herein said that “ as a main person, when he could not manage the remaining amount, then, booked him in NDPS Case”. The Bolero Jeep along with all persons again driven to the spot where the car of the informant was parked. The informant was in scared and again tried to manage Rs.15,000/- from his employer and friends. The driver Haribhai directed the informant to pay the said amount through Google Pay and accordingly, payment was made by the informant in the account of co-accused. The driver clicked the photographs of the informant, polythene bag and car and said to the informant that he should pay Rs.20,000/- remaining amount by tomorrow before noon, otherwise, case under the provisions of NDPS Act would be registered against him. On the next day, the accused demanded thrice the remaining amount. The informant made inquiry about the driver, who is H.P. Gadhvi, serving with the police Department. The informant called him near ICICI Bank for remaining amount and at about 10-00 pm, he saw the informant and his friends standing opposite side of the road, however, he did not turn up for taking remaining amount.

- 2.2 In the aforesaid facts, the informant filed an FIR against accused driver Haribhai Gadhvi and one lady constable, for alleged criminal intimidation and extortion, as a result, the FIR came to be registered under Sections 384, 114, 294(B) and 506(2) of the IPC. Pursuant to the registration of the FIR, the police constable driver was arrested and during his interrogation it reveals that the applicant herein being a PSI, was accompanied to him and her involvement was there in the alleged conspiracy of demanding illegal gratification and she was part of design for obtaining illegal gratification. The whole incident, captured in the CC TV footage.

It is alleged that the accused driver had given Rs.15,000/- to the applicant herein. The investigating Officer made report to the Special Court for addition of Section 7, 13, 13(1)(a) read with Section 13 (2) of the Act.

- 2.3 The applicant herein sought anticipatory bail before the learned Sessions Court and same came to be rejected on 24.03.2020 by well reasoned order. The learned Sessions Judge observed that there was overt act on the part of the applicant herein for alleged demand and extortion of money and she was very much present throughout of the incident and got pecuniary advantage of her post, and therefore, considering the seriousness of the offence and interest of the society at large, she dis-entitled for the discretionary relief.
3. This Court has heard learned counsel Hriday Buch, learned counsel for the applicant and Mr. Manan Mehta, learned APP for the respondent State.
4. Learned counsel Mr. Hriday Buch, raised the following contentions:
- (i) The applicant herein has been falsely implicated only on the basis of the statement of co-accused. In this context, he submitted that, the FIR lodged after complete inquiry made by the informant, however, the applicant herein mentioned in the FIR, as lady constable. Learned counsel further urged that as per the allegations made in the FIR, the applicant herein was present in the Police Jeep and informant himself was there in the vehicle, however, he could not identified the applicant herein which established that the implication of the

applicant is apparently false with oblique motive;

- (ii) The constable Haribhai Gadhvi demanded the alleged money from the informant and received Rs.15,000/- on his Google Pay account and as such, there is no evidence to suggest that the same was paid to the applicant herein;
- (iii) Demand of illegal gratification is sin-a-qua- none to constitute the offence, unless it is proved that the accused voluntarily accepted the money, knowing it to be bribe. The applicant herein did not have demanded any money and therefore, prima-facie, no offence under the provisions of the Act is made out, nor in absence of any alleged act of extortion on the part of the applicant, the offence alleged under Section 384 is made out, as she did not make any conversation with the informant on the date, when the car was intercepted or on the next date. Thus, therefore, it was submitted that by no stretch of imagination, it can be said that the present applicant was involved in the alleged offence;
- (iv) It was submitted that after registration of the FIR, the offences under the provision of the Act have been added and investigation for the same undertaken by the Dy.S.P. The principal accused is not arrested on the spot. In this background, referring Section 17A of the Act (Amended in 2018), it was submitted that the new provision prohibits any arrest, inquiry or investigation into the offence alleged have been committed by the public servant under the Act, except prior approval / sanction of the State Government. In the facts of case, no such approval being sought by the IO and

therefore, the whole investigation is vitiated, as there is a breach of mandatory statutory provision;

(v) The applicant is a lady and is a single parent, having responsibility of 10 years old son and widow mother and does not have any past antecedent of like nature and pursuant to the order passed by this Court, she has cooperated in the investigation and therefore, if she will not be protected by granting anticipatory bail, then, her entire career would be put to jeopardy. In these contexts, it was submitted that the applicant may kindly be protected from undergoing rigorous arrest and custodial interrogation.

5. In view of the aforesaid contentions, learned counsel Mr. Hriday Buch, submitted that the case is made out for exercising the powers vested with the Court for granting pre-arrest bail and accordingly, there being merits of the case, the application may be allowed.
6. Per contra, learned APP Mr. Manan Mehta for the State, vehemently opposed the petition, contending that the involvement of the applicant herein is established and considering the seriousness of the offence and in the interest of the society at large, the application may not be entertained. He further submitted that so far as the role of the present applicant is concerned, without her custodial interrogation, the effective investigation would not proceed. In the aforesaid facts, he submitted that the application having no merits, deserves to be dismissed.
7. I have carefully analysed the rival submissions advanced by learned counsel for the respective parties and perused the entire record.

8. Before advertng to the issue raised by the respective parties, let us consider the settled law with respect to granting and/or refusing the anticipatory bail. It has been settled by the Apex Court time and again in its various pronouncements that the powers under Section 438 Cr.P.C., is in extra-ordinary character and must be exercised sparingly in exceptional cases only and therefore, the anticipatory bail can be granted only in exceptional circumstances where the court is prima-facie of the view that the applicant has falsely been implicated in the crime, as grant of anticipatory bail to some extent, interference in sphere of investigation of an offence and hence, the court must be circumspect while exercising such powers. It is also settled law that the grant or refusal of the application should necessarily be depends on the facts and circumstance of each case and there is no hard and fast rule and no inflexible principles governing such exercise by the Court.
9. In light of the aforesaid legal proposition and considering the peculiar facts and circumstance of the case, this Court is of the considered view that the involvement of the applicant herein is prima-facie proved and established. A bare reading of the FIR, would show that throughout the incident, she did not restrain the driver Haribhai for alleged extortion and demand of illegal gratification which he demanded under the guise of registration of false case. In the presence of the applicant, the informant gave Rs.15,000/- to the driver. When driver tried to confirm the remaining amount of Rs.20000/-, the applicant herein directed the constable to register case under the provisions of NDPS Act, as the applicant shown his unwillingness to pay the amount. Therefore, this court is prima-facie of the considered view that, the alleged act of driver was in knowledge of the applicant. It was her duty either not to harass the informant or if there is substance in the alleged offence under the NDPS Act, then, she could have filed the case.

Therefore, prima-facie, there are reasonable ground to believe that the applicant herein involve in the alleged offence.

10. More emphasis being given to the applicability of Section 17A of the Amended Act, 1988. The learned Sessions Judge while rejecting the application, dealt with the issue at length and observed that Section 17A is not applicable in the facts of present case, as the case is not relatable to any recommendation made or decision taken by the applicant herein in discharge of official function or duties. Therefore, the learned Sessions Judge rightly held that Section 17A is not applicable in the present case.
11. It is the contention of learned counsel that the applicant herein neither demanded any amount, nor delivered any threat for extortion of money and therefore, she has been falsely involved in the offence. If we read the contents of the FIR and progress report of investigation, it reveals that the applicant herein was part of design formed by the accused Haribhai. In the facts of present case, it is useful to refer to and rely on the case of *Velluswamy Vs State represented by Inspector of Police, 2019(8) SCC 396*, wherein, it was observed by the Apex Court that actions of direct evidence for demand and acceptance or conspiracy held, irrelevant if circumstantial evidence unhesitatingly points towards the accused as being a part of design for obtaining illegal gratification. Therefore, at this stage, the issue raised having no any merits.
12. In *Niranjan Hem Chandra Sashittal Vs. State of Maharashtra, (2013) 4 SCC 642*, the Supreme Court observed that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes

the sense of civility and mars the marrows of governance. The Apex Court further observed that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered; and the only redeeming fact is that collective sensibility respects such suffering as it is in consonance with constitutional morality. The emphasis was on intolerance to any kind of corruption bereft of its degree.

13. In *Subramanian Swamy Vs. C.B.I, (2014) 8 SCC 682*, the Constitutional Bench of the Supreme Court observed that corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the 1988 Act.
14. In *State (CBI) Vs. Anil Sharma, AIR 1997 SC 3806*, wherein, anticipatory bail was refused to an MLA and son of a former Union Minister for Telecommunications on the ground that in cases of corruption in high places where accused has held high offices, he may wield wide influence and the investigation could suffer. The Court observed “In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed succession of such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he interrogated.
15. For the foregoing reasons, having regard to facts and circumstances, peculiar to the instant case, as have been analyzed hereinabove, the applicant failed to make out a special case for exercise of power to grant bail and considering the facts and parameters, necessary to be considered for adjudication of

anticipatory bail, without commenting on the merits of the case, this Court does not find any exceptional ground to exercise its discretionary jurisdiction under Section 438 of the Code to grant anticipatory bail. Therefore, this Court is of the view that anticipatory bail has no merits and is liable to be rejected.

16. This court has not delve into merits of the matter and views expressed in this order, are prima-facie only.
17. In the result, the application fails and is hereby rejected. Rule discharged. Interim relief stands vacated.

P.S. JOSHI

(ILESH J. VORA,J)

