

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION NO. 9693 of 2022

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IQBAL HASANALI SYED
Versus
STATE OF GUJARAT

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Appearance:

MR MIHIR JOSHI, LD. SR. ADVOCATE WITH MR YATIN OZA, LD. SR. ADVOCATE WITH MR PERCY KAVINA, LD. SR. ADVOCATE WITH MR.ASIM PANDYA, LD. SR. ADVOCATE WITH MR. ANIQ A KADRI WITH MR NARENDRA L JAIN(5647) for the Applicant(s) No. 1
MR YASH J PATEL(11240) for the Respondent(s) No. 1
MR MITESH AMIN, LD. PUBLIC PROSECUTOR WITH MR LB DABHI, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 08/06/2022

ORAL ORDER

1. Heard learned Sr. Advocate Mr. Mihir Joshi appearing with learned Sr. Advocate Yatin Oza, appearing with learned Sr. Advocate Percy Kavina with learned Sr. Advocate Mr. Asim Pandya with learned Advocate Mr. Aniq Kadri appearing with learned Advocate N.L. Jain for the applicant, learned Advocate Mr. Yash J. Patel appearing for the original complainant and learned Public Prosecutor Mr. Mitesh Amin appearing with learned APP Mr. L. B. Dabhi on behalf of the respondent State.

2. Issue **Rule** returnable forthwith. Learned APP Mr.Dabhi for the State and learned Advocate Mr.Patel for the complainant waive service of rule.

3. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant prays for being released on anticipatory bail in connection with **FIR No.1121601022020 of 2022** registered with Pethapur Police Station, District Gandhinagar on 15.05.2022 for offences punishable under Sections 387, 389, 120B, 143, 147, 149, 323, 504, 506(2), and 342 of the Indian Penal Code.

4. The allegation as levelled in the FIR in question being that the complainant had received a phone call at around 11 a.m., on the date of incident, asking him to attend a meeting at around 5.30 - 6 p.m., at one Vasant Vihar Bungalow, where one Zankarsinh Solanki was going to remain present for discussing an issue with regard to Skoda Showroom. The first informant appears to have gone to the place where he had been called for the meeting at around 6 p.m.,

where the accused, including the present applicant were already waiting. It appears that two other persons being one Kuren Amin and Ikshit Amin are alleged to have joined the meeting later on and it is also alleged that the said Kuren Amin had filed an FIR earlier, where the first informant was shown as an accused and against 25 others and whereas it is alleged in the FIR that the name of the person referred to herein above, Zankarsinh Solanki was also reflected as accused in the said FIR and whereas the complaint had been quashed qua the first informant and the said Mr.Solanki by this Court vide order dated 2.5.2022. It is alleged that the persons present, including the present applicant had given an agreement to the first informant in which agreement, according to the first informant, the entire burden of loss occurred for the Skoda Showroom was placed upon the first informant. Upon the first informant refusing to sign such agreement, the accused are alleged to have abused the first informant and are also alleged to have

threatened the first informant with doing away with his family and also pressurizing the first informant by threatening him that he will be implicated in a false rape case. The first informant alleges that since he does not want to sign the agreement, he was trying to leave when the accused had assaulted him and while he had somehow escaped from the said assault and the accused were shouting to detain the first informant, by which time the first informant could sit in his car along with his driver and he had managed to escape. The FIR also alleges that the first informant had given a complaint against the persons named in the FIR other than the present applicant of having threatened the first informant on 29.4.2022 at his office. It is also alleged that the accused had kept a notary present at the place in question and whereas the first informant alleges that he was threatened and assaulted for signing of the agreement.

5.It appears that the present applicant upon the FIR being preferred had approached this Court by

preferring an application under Section 482 of Cr.P.C., being Criminal Misc. Application No.8951 of 2022 and whereas it also appears that the applicant had, later approached the learned Sessions Court praying for being released on anticipatory bail. That the learned Sessions Court vide order dated 30.5.2022 had rejected the application preferred by the present applicant, being aggrieved by which the present application has been preferred.

6.Learned Sr. Advocates appearing on behalf of the applicant would submit that the applicant is a designated Sr. Advocate practising in this Court and would further submit that the place where the alleged incident had taken place was the residence of a former Chief Minister of the State of Gujarat and whereas the said person was known to all the persons involved in a dispute and whereas for settling the said dispute, the said person had called the first informant and other accused and whereas the present applicant had been invited by the said person and whereas the present applicant had

remained present on such invitation. It is further alleged that the FIR makes very general and vague allegations and whereas no specific allegations are levelled against the present applicant of either having threatened, assaulted or attempted to extort from the first informant. It is further submitted by the learned Sr. Advocates for the applicant that the present applicant has no antecedents of being involved in any criminal activities herein before. It is further submitted that the applicant is not likely to flee from the investigation, nor would there be any apprehension that the applicant would try to tamper, in any manner, with the investigation. Learned Sr. Advocates would further submit that all the offences were Magistrate triable offences i.e. the offences alleged are not grave or serious offences. It is also submitted by the learned Sr. Advocates that the offences alleged, except for offence punishable under Sections 387, 389 and 506(2) of IPC, are punishable with imprisonment for a period up to 2 years or even lesser. Insofar as Section 389 is

concerned, it is submitted that while imprisonment is for 10 years along with fine, the offence is bailable, as far as Section 387 is concerned, it is submitted that the said Section carries punishment of imprisonment for a period of 7 years and is cognizable and non-bailable offence. Learned Sr. Advocates would submit that considering the averments in the FIR and also the further statement of the complainant, there is no material by which it could be alleged that the applicant had committed any offence punishable under Section 387 i.e. of putting or attempting to put a person in fear of death or of grievous hurt in order to committing of extortion. It is urged submitted by the learned Sr. Advocates that insofar as custodial interrogation is concerned, the document in question, which is prepared by the present applicant i.e. the agreement upon which the first informant was threatened to put his signature on, has already been recovered by the Investigating Officer from the computer in the office of the present applicant. Learned Sr. Advocates

would further submit that having regard to the law laid down by the Hon'ble Apex Court in a number of judgements, primarily being judgement of the Hon'ble Apex Court in case of **Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.** reported in **(2011)1 SCC 694**, the judgement in case of **Sushil Aggarwal and Ors. Vs. State (NCT of Delhi) and Anr., reported in (2020) 5 SCC 1**, this Court may be pleased to release the present applicant on anticipatory bail.

7.This application is vehemently opposed by the learned PP Mr.Mitesh Amin appearing with learned APP Mr.Dabhi. Learned PP Mr.Amin, at the outset, would draw the attention of this Court to the FIR, which was preferred by one Mr.Kuren Amin i.e. the FIR in which the present first informant was shown as an accused. Learned PP would submit that the FIR *inter alia* alleges a fraud upon a Bank and the FIR further alleges that a Company called Torque Automotives Pvt. Ltd., was defrauded of approximately Rs.142 crore. Learned PP after

drawing the attention of this Court to the said FIR would take this Court to an order passed by the learned Sessions Court in an application preferred by the present first informant, whereby the learned Sessions Court vide order dated 1.4.2022 had released the first informant on regular bail. Learned PP has emphasized on the submissions made by the present first informant before the learned Sessions Court that the first informant - applicant therein was a creditor of the company and whereas the dispute was an internal dispute between the Directors of the said Company. Learned PP would submit that the present first informant had made his stand very clear at the first instance itself that while he was a creditor of the Company in question, he had nothing to do with the dispute. Learned PP Mr.Amin, would thereafter draw the attention of this Court to an agreement between the complainant - first informant of the first complaint as well as one Zankarsinh Solanki, who is an accused in the first FIR as well as the present FIR filed by the first

informant and would submit that while the first informant *inter alia* alleged fraud of Rs.142 crore, the issue with regard to the said Zankarsinh Solanki had been settled for a much lesser amount i.e. for an amount of Rs.20 crore. Learned PP would also draw the attention of this Court to the fact that the settlement deed was between the said Zankarsinh Solanki and the first informant of the earlier FIR and whereas insofar as the present first informant is concerned, the said earlier FIR was quashed by this Court, merely on an affidavit by the complainant, without any agreement between the parties, which was placed on record. Learned PP would emphasize that since the original alleged fraud, which was subject matter of the first FIR was for a much larger amount and whereas the settlement with Zankarsinh Solanki who is also an accused in the present FIR was for a lesser amount and since there are other documents, reference to which is found in the statements of the witnesses, which would be required to be recovered and, therefore, custodial

interrogation of the present applicant would be necessary.

8.Learned PP Mr.Amin has thereafter submitted that the entire conduct of the applicant clearly reflects his non-cooperation with the investigation. Learned PP would submit that while the present FIR had been lodged on 15.5.2022 immediately on the very next day, the present applicant had approached this Court by filing an application for quashing of the FIR. Learned PP would further submit that the applicant had thereafter not cooperated with the investigation and whereas even the statements given by his family members clearly reflect that they were not telling the truth about the whereabouts of the present applicant. Learned PP would submit that looking to the conduct of the applicant, which reflects absolutely non-cooperation with the investigation, the applicant may not be granted anticipatory bail by this Court.

9.Learned PP would thereafter draw the attention of

this Court to a letter dated 16.5.2022 written by the former Chief Minister of the State at whose residence the meeting in question had happened, where the alleged incident had taken place. Learned PP would submit that while the former Chief Minister in his letter has tried to defend the present applicant by submitting that the applicant was present at his residence at the invitation of the former Chief Minister, but according to the learned PP, the important aspect which is required to be noted is that the said letter clearly amounts to interfering with the investigation.

10. Learned PP would further submit that even after the present FIR had been lodged, the mother of one of the accused Zankarsinh Solanki had visited the office of the first informant and had attempted to threaten the first informant which also reflects upon the conduct of the present applicant.

11. Learned PP Mr.Amin would further submit that since the present applicant being a Sr. Advocate,

releasing the present applicant on anticipatory bail may have an adverse impact on the investigation, and therefore, the present applicant may not be released by this Court.

12. Learned PP has also relied upon a telephonic conversation between one of the accused herein, who was brother of the first informant of the earlier FIR with a relative of the present first informant and whereas according to the learned PP, the transcript of the conversation between the brother of the first informant of the earlier complaint and the relative of the present first informant when the first informant was in custody in connection with earlier FIR also reflects upon the fact that the dispute was with regard to a huge amount of approximately Rs.111 crore, and whereas according to the learned PP, custodial interrogation of the present applicant would also be required to unearth the entire conspiracy behind the fraud in question.

13. Learned PP Mr.Amin would further draw the

attention of this Court to observations of learned Coordinate Bench of this Court vide decision dated 2.6.2022 in Criminal Misc. Application No.8951 of 2022, preferred by the present applicant praying for quashing of the impugned FIR, whereby the application for quashing had been rejected by the learned Coordinate Bench.

14. Learned PP would thereafter relied upon the decision of the Hon'ble Apex Court in case of **P. Chidambaram Vs. Directorate of Enforcement, reported in (2019) 9 SCC 24**. Learned PP has particularly relied upon paragraph 69 of the said decision of the Hon'ble Apex Court, wherein the Hon'ble apex Court has *inter alia* observed that power under Section 438 of Cr.P.C., is an extraordinary power and the same has to be exercised sparingly in exceptional cases and after due circumspection.

15. Learned PP would thereafter rely upon the decision of the Hon'ble Apex Court in case of

Manager Pandey Vs. State of Bihar and Anr., reported in (2004) 13 SCC 458, more particularly paragraph 7 thereof, whereby the Hon'ble Apex Court has observed that the High Court had lost sight of the detailed order passed by the learned Magistrate as well as the learned Sessions Judge, who had found strong *prima facie* case against the applicant therein. Learned PP would submit that in the instant case also, the learned Sessions Court has clearly found a strong *prima facie* case against the present applicant and whereas insofar as the documents and the submissions made by the learned PP would also show that a very strong *prima facie* case against the applicant.

16. Learned PP has further relied upon a decision of the Hon'ble Apex Court in case of **State of A.P. Vs. Bimal Krishna Kundu and Anr., reported in (1997) 8 SCC 104**. Learned PP has particularly relied upon paragraph 12 of the said decision, wherein, according to learned PP, the Hon'ble Apex Court had deprecated the decision of the High Court

in granting anticipatory bail to the applicants therein. Relying upon the decisions of the Hon'ble Apex Court as referred to herein above, learned PP Mr.Amin would submit that this Court may not exercise discretion and grant anticipatory bail to the present applicant.

17. Learned Advocate Mr.Y. J. Patel appearing for the first informant would submit that he is adopting the arguments of the learned PP. Independently learned Advocate Mr.Patel would submit that the offences alleged against the applicant are very serious. Learned Advocate Mr.Patel would submit that the applicant being a Sr. Advocate is interfering with the investigation, more particularly according to the learned Advocate Mr.Patel, the letter referred to by the learned PP written by the former Chief Minister and the mother of one of the accused going to meet the complainant and threatening him all, according to learned Advocate Mr.Patel, being at the behest of the present applicant. Learned Advocate Mr.Patel would further submit that releasing the

present applicant on anticipatory bail would, thus, have an adverse consequence on the investigation. Learned Advocate Mr.Patel, therefore, submits that this Court may not exercise discretionary jurisdiction in favour of the present applicant.

18. As against the submissions of the learned PP, learned Sr. Advocates for the applicant would once again draw the attention of this Court to the present FIR in question as well as the letter of the former Chief Minister relied upon by the learned PP and would submit that reading both the documents together it would clearly appear that former Chief Minister had familial relations with the accused as well as the first informant and whereas he had called all of them to settle the dispute. It is also submitted that the first informant was not called to any unknown place, where he would not be comfortable, rather the first informant was called to the residence of the said person. It is also emphasized that the first informant was made aware of the fact that as to why he was called, as admitted by the first informant

himself in the FIR and whereas the phone call received by him, according to the first informant, was at 11 a.m., but he had gone to attend the meeting at around 6 p.m. Learned Sr. Advocates for the applicant would submit that this would clearly reflect that the first informant after having considered all the aspects had taken a decision to attend the meeting and whereas the said decision to attend the meeting was not at the spur of the moment.

19. Learned Sr. Advocates would further submit that insofar as the allegation that the letter written by the former Chief Minister was an attempt to influence the investigation, the said letter is addressed to none other than the present Chief Minister of the State and as by way of the said letter, it is requested that the proper investigation may be conducted. It is further submitted that in any case, the said letter does not in any way reflect that it had been written at the instance of the present applicant.

20. Insofar as the submission that the present applicant had not cooperated with the investigation, it is submitted by the learned Sr. Advocates that the present applicant, at the first instance, since he was of the opinion that the FIR was nothing but an abuse of process of law, had availed appropriate remedy as available to him under the law by filing an application under Section 482 of Cr.P.C., before this Court praying for quashing of the FIR and whereas thereafter the applicant had thereafter preferred an application before the learned Sessions Court for grant of anticipatory bail. Learned Sr. Advocates appearing for the applicant would submit that the cooperation which is expected by the Investigating Officer would virtually mean that the applicant ought not to have availed of any legal remedies, which are available to him and whereas immediately upon an FIR being filed, the first informant ought to have turned himself in. Learned Sr. Advocates would submit that the very idea of cooperation as submitted by the learned PP would render the

protection of law as available under Section 482 of Cr.P.C., as well as under Section 438 of Cr.P.C., otiose.

21. Learned Sr. Advocates would thereafter refer to the decision of the Hon'ble Apex Court in case of **Sushila Aggarwal** (supra) and would submit that the Hon'ble Apex Court, through a Constitutional Bench had *inter alia* discussed the law laid down by an earlier Constitutional Bench in case of **Gurbaksh Singh Sibbia Etc vs State Of Punjab, reported in (1980) 2 SCC 565**. Insofar as the observations of the Hon'ble Apex Court in the decision of the **Sushila Aggarwal** (supra) relevant for the present purpose, learned Sr. Advocates have relied upon paragraph 52, whereby the Hon'ble Apex Court has summarized the observations of the Hon'ble Apex Court in case of **Gurbaksh Singh Sibbia** (supra). Learned Sr. Advocates would submit that while the learned PP had relied upon the decision in case of **P. Chidambaram** (supra), which is a decision of a Two-Judge Bench of the Hon'ble Apex Court of the

year 2019, in the later Constitutional Bench judgement, relying upon the earlier decision in case of **Gurbaksh Singh Sibbia** (supra) of the Hon'ble Apex Court, has *inter alia* observed that the accused is not obliged to make out a special case for grant of anticipatory bail and whereas it is further observed that the exercise of power of granting anticipatory bail is not confined to exceptional cases. The Hon'ble Apex Court has, according to the learned Sr. Advocates, observed that the Courts are not justified to grant anticipatory bail in only special cases, on the ground that the power is extraordinary. The Apex Court has, according to the learned Sr. Advocates, further observed that overgenerous introduction (or reading into) of constraints on the power to grant anticipatory bail would render the said provisions constitutionally vulnerable. Learned Sr. Advocates relying upon the decision of the Apex Court in case of **Sushila Aggarwal** (supra) would submit that paragraph 69 in case of **P. Chidambaram** (supra), relied upon by the learned

PP, has been impliedly overruled by the Constitutional Bench as observed in the observations at paragraph 52.

22. Learned Sr. Advocates would thereafter refer to paragraph 111 of the decision of the Hon'ble Apex Court in case of **Siddharam Satlingappa Mhetre** (supra) and would submit that the Hon'ble Apex Court has *inter alia* observed that while no inflexible guidelines could be provided for grant or refusal to grant anticipatory bail, certain parameters have been set out at paragraph 112. Learned Sr. Advocates would submit that the case of the present applicant would be squarely covered by the parameters laid down by the Hon'ble Apex Court. Learned Sr. Advocates would thereafter refer to the decision of the Hon'ble Apex Court in case of **Bhadresh Bipinbhai Sheth v State of Gujarat & Anr., reported in (2016) 1 SCC 152**, more particularly the observations of the Hon'ble Apex Court at paragraph 25. It is submitted by the learned Sr. Advocates that the law laid down by the

Hon'ble Apex Court in case of **Siddharam Satlingappa Mhetre** has been reiterated by the Hon'ble Apex Court in the said decision and whereas it is also observed by the Hon'ble Apex Court that the grant of anticipatory bail under Section 438 of Cr.P.C., could not only be in a special case.

23. Learned Sr. Advocates would therefore submit that the present applicant is ready and willing to cooperate with the investigation, that the allegations against the applicant are not such which would require arrest of the applicant, that there is no possibility of the applicant fleeing from justice, and whereas neither there are any antecedents of the applicant having committed any crime of the like nature, nor is there any likelihood that the applicant would repeat a similar crime or for that matter any offence.

24. Having regard to the same, learned Sr. Advocates for the applicant would submit that this Court may release the present applicant on

anticipatory bail on such terms and conditions, as may be deemed proper by this Court.

25. Heard learned Advocates for the respective parties, who have not submitted anything further.

26. At the outset, it is required to be noted that the ambit of the FIR in which the present applicant is arrayed as an accused is in a very narrow compass. The first informant alleges that he had been called by one of the accused for attending the meeting for a particular purpose. The first informant had attended the meeting, where he was asked to sign a document where some liability was sought to be imposed upon him. Upon the first informant not signing on the same, all the accused had threatened and assaulted him and whereas the first informant had escaped from the place in question. In the considered opinion of this Court, the ambit of the FIR cannot be expanded any further. The attempt by the learned PP, in order to justify custodial interrogation of the present applicant, to read the

allegations as levelled in the earlier FIR with the facts of the present FIR cannot be countenanced. The earlier FIR in question was between private individuals and whereas whatever may be the extent of amount alleged to have been defrauded, it was in the considered opinion of this Court, the discretion of the individuals concerned to decide as to the manner and method in which the dispute was to be settled. In the considered opinion of this Court, the State or the investigating officer cannot be heard to state that since the dispute alleged in the first FIR was for a much larger amount and settlement arrived at was for a smaller amount, therefore, there would be other documents apart from the document in question which are alleged to have been prepared by the present applicant and for non-signing of which document, the first informant was allegedly assaulted etc. In the considered opinion of this Court, for the purpose of considering the present application for grant or refusal of anticipatory bail, the gravity of the offence as alleged in the present

FIR are to be taken into consideration and whereas allegations in an earlier FIR - where incidentally the applicant was not an accused, rather he had appeared for the parties in the quashing petition before this Court, cannot be relied upon, more particularly since it clearly appears that the dispute involved in the earlier FIR was alleging a private fraud upon the accused and whereas the first informant of the said FIR is an accused of the present FIR. This Court is of the opinion that while considering the present application for the purpose of grant or refusal of anticipatory bail under Section 438 of Cr.P.C., the allegations which are levelled in the present FIR and the material collected with regard to the allegations of the present FIR are the relevant material and private disputes between the parties, which may not have any connection with the present applicant, are not required to be looked into by this Court at this stage.

27. Insofar as the allegations in the present FIR are concerned, it appears that while the presence of the

present applicant is not denied by the applicant himself, at the same time as per the FIR, there are no specific allegations levelled against the applicant in particular. While it is undoubtedly true, as attempted to be submitted by the learned PP, that an FIR is not required to be an encyclopedia of the facts, but at the same time in the considered opinion of this Court, for the purpose of considering an application under Section 438 of Cr.P.C., the basic allegations levelled against the accused as borne out from the FIR and the investigation papers would certainly have a bearing for coming to a conclusion about the gravity of the offence and the exact role played by the applicant.

27.1. As it appears that while the FIR had been registered on 15.5.2022 and whereas while no specific allegation has been made against the present applicant, in a statement recorded of the first informant by the I.O., on the very next day, the first informant improves upon his statement by imputing certain threats to the present

applicant. Be that as it may, the question which requires consideration of this Court is whether the present applicant fulfills the parameters as laid down by the Hon'ble Apex Court in case of **Siddharam Satlingappa Mhetre** (supra), whereby the Hon'ble Apex Court had reiterated the law laid down by the Hon'ble Court in case of **Gurbaksh Singh Sibbia** (supra). The said aspect would be discussed herein after, after dealing with the submissions of the learned Advocates for the parties, more particularly after dealing with the submissions made by the learned PP and the learned Advocate for the first informant.

28. As far as the question of not cooperating with the investigation as raised by the learned PP is concerned, this Court finds force in the submissions made by the learned Sr. Advocates for the applicant that the cooperation which is expected of an accused, is that as soon as an FIR is registered against the accused, the accused is required to be present himself before the I.O., in spite of the

imminent threat of the applicant being arrested upon his cooperation. In the considered opinion of this Court, it is not the case here that the applicant upon an FIR being filed had absconded without availing of any legal remedies, rather what appears here is that immediately upon the FIR being filed the applicant had first approached this Court by preferring an application under Section 482 of Cr.P.C., and thereafter he had approached the learned Sessions Court and thereafter this Court by preferring application/s under Section 438 of Cr.P.C. In the considered opinion of this Court when an accused is availing the remedies which are available to him under the law and whereas more particularly since he had filed application under Section 438 of Cr.P.C., it could not be expected of such an accused to make himself present before the I.O., just to show that he is cooperating with the investigation. Once an accused avails the legal remedies which are available to him under the law, and whereas when such applications are under consideration of

competent Courts, including this Court, it could not be submitted that the applicant ought not to be granted anticipatory bail because he has not cooperated with the investigation, more particularly since such cooperation would defeat the very purpose of preferring the applications in the first place.

29. Insofar as the allegations that the applicant is trying to influence the investigation and/or the witnesses, in the considered opinion of this Court, insofar as the letter of the former Chief Minister, which is emphasized by the learned PP is addressed to none other than the present Hon'ble Chief Minister of the State of Gujarat. In the considered opinion of this Court, the former Chief Minister being the witness of the incident, narrating his version of the incident, even though the said letter is also addressed to the District Superintendent of Police and the Police Inspector in question ought not to be and should not be considered as something which is considered as a material which is

influencing the investigation. The meeting in question had taken place at the residence of the former Chief Minister and the former Chief Minister was a witness to the entire incident and in such capacity, the former Chief Minister had submitted his version of the incident to the present Chief Minister, and whereas it does not, in any way, reflect that the said letter was written at the behest of the present applicant or there was any special request to exonerate the present applicant, which would justify the allegations that writing of such letter was either at the behest of the present applicant or such letter was designed to influence the investigation.

29.1. Insofar as the allegation that even after filing of the FIR relatives of one of the accused Solanki had met the present first informant, in the considered opinion of this Court, what appears from the record is that the person who had met the complainant was mother of the accused Zankarsinh Solanki. It also appears that the said accused Solanki and the present first

informant were family friends and close business associates for a long period of time. It is pertinent to note at this stage that Solanki and the present applicant were also shown as accused in the first FIR upon which much emphasis was laid by the learned PP. While the course adopted by the mother of the co-accused may not have been proper, but at the same time in the considered opinion of this Court there is no allegation that the mother of the co-accused who was well known to the first informant had met the first informant at the behest of the present applicant, rather from the application given by the first informant, it clearly appears that the mother of the co-accused had approached the first informant, keeping in mind the fact that the said accused Zankarsinh Solanki and his family had close close relations with the first informant at some point of time.

Having regard to the same, it clearly appears that the allegation against the present applicant that he is trying to influence the investigation in the

considered opinion of this Court, cannot be countenanced.

30. Insofar as the submissions of the learned PP more particularly relying upon the decision of the Hon'ble Apex Court in case of **P. Chidambaram** (supra) this Court is inclined to accept the submissions made by the learned Sr. Advocates on behalf of the applicant. Paragraph 69 which is relied upon by the learned PP in case of **P.Chidambaram** *inter alia* states that power under Section 438 of Cr.P.C. is an extraordinary power and the same has to be exercised sparingly and only in exceptional cases. Paragraph 69 is reproduced below for benefits:-

“69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C., is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing 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.”

31. As against the observations of the Hon’ble Apex Court in the judgement of **P.Chidambaram** (supra), which is by a Bench consisting of Two Judges, in a later decision in case of **Sushila Aggarwal** (supra), a Five-Judge Bench of the Hon’ble Apex Court, at paragraph 52, summarized the conclusions in case of **Gurbaksh Singh Sibbia**. Paragraph 52.3 to 52.7 being relevant for the present purpose are reproduced herein below for benefits:-

“52.3 The accused is not obliged to make out a special case for grant of anticipatory bail; reading an otherwise wide power would fetter the court’s discretion. Whenever an application (for relief under [Section 438](#)) is moved, discretion has to be always exercised judiciously, and with caution, having regard to the facts of every case. (Para 21, Sibbia).

52.4 While the power of granting anticipatory bail is not ordinary, at the same time, its use is not confined to exceptional cases (Para 22, Sibbia).

52.5 It is not justified to require courts to only grant anticipatory bail in special cases made out by accused, since the power is extraordinary, or that several considerations - spelt out in Section 437- or other considerations, are to be kept in mind. (Para 24-25, Sibbia).

52.6 Overgenerous introduction (or reading into) of constraints on the power to grant anticipatory bail would render it Constitutionally vulnerable. Since fair procedure is part of Article 21, the court should not throw the provision (i.e. Section 438) open to challenge "by reading words in it which are not to be found therein." (Para 26).

52.7 There is no "inexorable rule" that anticipatory bail cannot be granted unless the applicant is the target of mala fides. There are several relevant considerations to be factored in, by the court, while considering whether to grant or refuse anticipatory bail. Nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the accused's presence not being secured during trial; a reasonable apprehension that the witnesses might be tampered with, and "the larger interests of the public or the state" are some of the considerations. A person seeking relief (of anticipatory bail) continues to be a man presumed to be innocent. (Para 31, Sibbia)."

32. A plain reading of the observations of the Hon'ble Apex Court in the above quoted paragraphs makes it clear that the observations of the Hon'ble Apex Court in case of **P. Chidambaram** (supra) at paragraph 69 is no longer good law. At paragraph 52.3, the Hon'ble Apex Court has observed that the accused is not obliged to make out a special case for

grant of anticipatory bail and whereas the Hon'ble Apex Court has clearly observed that reading into the otherwise wide power would amount to placing fetters upon the Courts' discretion in considering an application for anticipatory bail. While the Hon'ble Apex Court has observed that the discretion has to be exercised judiciously and with caution, at the same time at paragraph 52.4, the Hon'ble Apex Court has observed that granting of anticipatory bail, while it is not an ordinary power, but at the same time, it cannot be held that such grant should be confined to exceptional cases only. The Hon'ble Apex Court at paragraph 52.5 has further observed that the anticipatory bail is not required to be granted only when a special case is made out, and whereas the Hon'ble Apex Court has further held that since the power is extraordinary, several considerations, may have to be kept in mind. The Hon'ble Apex Court further observed that there cannot be a reading of words in Section 438, which are not otherwise found in the said section. Having

regard to the observations of the Hon'ble Apex Court in case of **Sushila Aggarwal** (supra), in the considered opinion of this Court, the observations of the Hon'ble Apex Court at paragraph 69 in case of **P. Chidambaram** (supra), would not remain good law and whereas in the considered opinion of this Court, this Court would be bound by the later Constitutional Bench decision of the Hon'ble Apex Court in case of **Sushila Aggarwal** (supra).

33. Insofar as the decision in case of **Manager Pandey** (supra) relied upon by the learned PP, it appears that the issue before the Hon'ble Apex Court was a case where a police officer was possibly influenced by the accused police officer to give a doctored report more particularly where the accused police officer is alleged to have intentionally killed a member of public to satisfy his ego. It is under such circumstances the Hon'ble Apex Court had made the observations at paragraph 7. In the considered opinion of this Court, paragraph 7 relied upon by the learned PP does not lay down any law or binding

precedent, rather in the considered opinion of this Court, the observations of the Hon'ble Apex Court at paragraph 7 are observations on the facts of the case.

34. Insofar as the observations made in the decision of Hon'ble Apex Court in case of **State of A.P. Vs. Bimal Krishna Kundu and Anr.** (supra) relied upon by the learned PP at paragraph 12, the same is clearly on the facts of that case. As such, it would be pertinent to note that before the Hon'ble Apex Court the accused were alleged of leaking question papers of intermediate examination, which would have impact on a larger scale on the public interest. The observations of the Hon'ble Apex Court, in the considered opinion of this Court, being on the facts of that case cannot be termed as being a binding precedent.

35. Coming to the principal question of grant or refusal of anticipatory bail, this Court seeks to rely upon the observations of the Hon'ble Apex Court in

case of **Siddharam Satlingappa Mhetre** (supra), more particularly at paragraph 111 and 112 where the Hon'ble Apex Court has laid down certain parameters which are to be taken into consideration while dealing with an application for anticipatory bail. Paragraphs 111 and 112 being relevant for the present purpose are reproduced herein below for benefit:-

“111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia's case (supra) that the High Court or the Court of Sessions to exercise their jurisdiction under [section 438 Cr.P.C.](#) by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*

ii. 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;

iii. The possibility of the applicant to flee from justice;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. 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 accused is implicated with the help of [sections 34 and 149](#) of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. 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 the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. 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.”

36. Considering the law laid down by the Hon'ble Apex Court more particularly the parameters this Court proposes to discuss the facts of the present case in the context of the parameters laid down.

36.1. Insofar as the parameter No.112.1 with regard to nature and gravity of accusation and the exact role of the accused, in the considered opinion of this Court, it appears that while the FIR does not make out any specific allegation against the present applicant, the first informant in his statement of the very next day makes allegations against the present applicant of having levelled threats against the first informant. Reading the FIR and the further statements as well as the investigation papers provided by the learned PP, it appears that the exact role which would be attributed to the present applicant was of having prepared a document and which incidentally has

been seized by the I.O. and later remaining present in the meeting and at the most of threatening the first informant. Thus, the role played by the applicant could be of preparing the agreement and further accepting the improved version of the first informant, of threatening the first informant. Insofar as the parameter No.112.2, it appears that there are no antecedents of either being named in any Criminal Complaint/FIR herein before or of having undergone imprisonment or conviction in respect of any cognizable offence against the present applicant. Insofar as parameter No.112.3, that is with regard to possibility of the applicant to flee from justice, it has been submitted by the learned Sr. Advocates that the applicant is a designated Sr. Advocate practising in this Court having a large practice and more over looking to the flimsy nature of the allegations against the present applicant, there is no likelihood whatsoever of the applicant attempting to flee from justice and

whereas this Court intends to accept the same. Insofar as parameter No.112.4, having regard to the fact, that there are no previous reported antecedents against the applicant and also considering the fact that the present applicant is a Sr. Advocate of this Court, there is a very remote likelihood of the applicant repeating the commission of alleged offences. Insofar as parameter 112.5, the said parameter has been emphasized by the learned Sr. Advocates for the applicant and whereas this Court also finds considerable force in such submission. The applicant while he was present at the meeting his presence could be justified by the fact that he was acting on behalf of his client and had prepared a document as instructed by his client, where some liability was to be shared between one of the co-accused i.e. Solanki and the present first informant. It is not the case of the learned PP that the contents of the agreement are either illegal or against public policy, which would bring

the present applicant under the ambit of doing some illegal activity. That the present applicant being a designated Sr. Advocate of this Court, the allegations clearly appear to have been designed to injure and/or humiliate the present applicant, more particularly the applicant being a soft target, and whereas by filing the FIR immense pressure could be brought upon the other accused to bend to the will of the first informant. Insofar parameter 112.7, it appears that as of now the material available does not reflect commission of any offence by the present applicant, except the agreement in question being prepared by the present applicant and at the most of having threatened the first informant. Insofar as parameter 112.8 in the considered opinion of this Court, since there does not appear to be any material as produced by the learned PP which would justify custodial interrogation of the present applicant more particularly keeping in view the allegations levelled against him in the

FIR and the material collected so far and furthermore considering the fact that the arrest of the present applicant would cause humiliation, harassment and unjustified detention of the present applicant, who happens to be a designated Sr. Advocate of this Court, in the considered opinion of this Court, the scales of justice would tilt in favour of the present applicant. Insofar as parameter 112.9, in the considered opinion of this Court, while an allegation had been made against the present applicant having attempted to influence the investigation, which has been dealt with by this Court as herein above, and whereas this Court has not found any material worth the name, which would justify such allegation. Insofar as parameter 112.10, more particularly the aspect with regard to frivolity in prosecution and genuineness of the prosecution, in the considered opinion of this Court, as submitted by the learned Sr. Advocates for the applicant, the first informant

had gone to the place of incident after approximately 7 hours of receiving the telephonic call where he was invited to attend the meeting. The first informant was clearly informed about the purpose of the meeting in question and whereas the first informant had, knowing fully well the purpose of the meeting, attended the meeting without any demurer. The first informant thereafter had been given a document which according to the first informant, was against his interest, resulting in some altercation between the principal players. The first informant appears to have given a version of the incident as it he was coerced into attending the meeting where he was forced to sign the agreement, whereas as noted herein above the first informant attended the meeting voluntarily with full knowledge about the purpose of the meeting. That taking advantage of the presence of the present applicant at the place in question, the first informant appears to have brought the present applicant also under the

ambit of the FIR and which, in the considered opinion of this Court, reflects on the frivolity of the prosecution.

37. At this stage, this Court would also seek to rely upon the observations of the Hon'ble Apex Court at paragraph 113 of the judgement in case of **Siddharam Satlingappa Mhetre**, which are reproduced herein below for benefits :-

"113. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record."

38. Having regard to the observations of the Hon'ble Apex Court and in view of the discussion herein above, in the considered opinion of this Court, this is a fit case where this Court would exercise discretion in favour of the present applicant and direct the Investigating Officer to release the present applicant in case of his arrest in connection

with **FIR No.1121601022020 of 2022** registered with Pethapur Police Station, District Gandhinagar on 15.05.2022.

At this stage, learned Advocate for the applicant on instructions would submit that the applicant is ready and willing to abide by all the conditions including imposition of conditions with regard to powers of Investigating Agency to file an application before the competent Court for his remand. Learned Sr. Advocates would further submit that upon filing of such application by the Investigating Agency, the right of applicant-accused to oppose such application on merits may be kept open.

39. In the result, the present application is allowed by directing that in the event of applicant herein being arrested in connection with **FIR No.1121601022020 of 2022** registered with Pethapur Police Station, District Gandhinagar on 15.05.2022 for offences punishable under Sections 387, 389, 120B, 143, 147, 149, 323, 504, 506(2), and

342 of the Indian Penal Code, 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 the applicant:

(a) shall cooperate with the investigation and make himself available for interrogation whenever required;

(b) shall remain present at the concerned Police Station on **14.06.2022** between 11:00 a.m. and 2:00 p.m.;

(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 or till further orders;

(f) shall not leave India without the permission of the Court and, if having passport shall surrender the same before the Trial Court within a week.

40. In spite of this order, it would be open for the Investigating Agency to file an application for police remand of the applicant to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. 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 right of the accused to seek stay against an order of remand, if ultimately granted, and the learned Magistrate to consider such a request in accordance with law. 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.

41. At the trial, the Trial Court shall not be influenced by the observations made by this Court which are *prima facie* in nature only for the purpose of deciding this application. Rule is made absolute to the aforesaid extent. **Direct service is permitted.**

V.V.P. PODUVAL

(NIKHIL S. KARIEL,J)