The gap between the storage and the consumption by a consumer will have to be bridged before the danger or the hurt contemplated under Sections 328 and Section 188 of the IPC get attracted and it is only when the prosecution proves that it is the Petitioners who are the one who did it, their prosecution would be a success. The Apex Court in ***Joseph Kurian Philip Jose (supra)***, has succinctly drawn a distinction in the two terminologies applied by Section 328 of the IPC in the form of direct and indirect methods and the said judgment continues to be an authoritative and binding precedent till date. In the light of the aforesaid position emerging from the submissions advanced before us, we do not intend to continue the prosecution against the Petitioners as it would merely amount to an abuse of process of law and the prosecution of the Petitioners under Sections 328 and 188 of the IPC, therefore, cannot continue. We do not make any comment on the prosecution of the Petitioners under the FSS Act and we are not inclined to show any indulgence to the Petitioners on that count. The Respondent-Authorities are permitted to prosecute the Petitioners under the provisions of the said enactment.

Resultantly, we quash and set aside the FIR bearing No.87 of 2019 dated 2nd March 2019 registered against the Petitioners only to the extent it registered offence against the Petitioners under Section 328 and 188 of the IPC and we restrain the Respondents from initiating any action against the aforesaid provisions under the IPC.

Result:- FIR quashed to the extent it registered offence under Section 328 and 188 of the IPC

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ACQUITTAL & BAIL CASES

HIGH COURT OF GUJARAT

(A.J.Desai, J.)

R/Criminal Misc Application No 17390 of 2019

Decided on 13 September 2019

VIPULKUMAR ASHOKBHAI SANGADIYA (PATNI)- Applicant(s).

Versus

STATE OF GUJARAT - Respondent(s).

Law Covered:- Code of Criminal Procedure, 1973 — Section 438 — Anticipatory Bail — Indian Penal Code, 1860 — Section 395, 506(2) & 294(b) — Gujarat Police Act, 1951 — Section 135(1) — Cross

FIR — Nobody injured — Similar allegations made in the cross FIR — Anticipatory Bail granted. (Para 6)

Held:- Having heard the learned advocate for the parties. Considering the fact that it is the case of the cross FIR, nobody injured and similar allegations were made in the cross FIR by the neighbors and co-accused of present applicant has been enlarged by the coordinate bench of this Court vide order dated 22.08.2019 passed in Criminal Misc. Application No. 15983 of 2019 and perusing the investigating papers and as well as taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicant. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors.*** as reported at ***[2011] 1 SCC 6941,*** wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of ***Shri Gurubaksh Singh Sibbia & Ors.,*** as reported at ***(1980) 2 SCC 665***. (Para-6)

Counsel:- ***For Applicant(s):*** *Mr. Samir Afzal Khan, Adv.*
For Respondent(s): *Mr. Mitesh Amin, Ms. Krina Calla, Advs.*

Cases Referred:-

1. *Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors., [2011] 1 SCC 6941 (Para-6)*
2. *Shri Gurubaksh Singh Sibbia & Ors., (1980) 2 SCC 665, (Para-6)*

ORDER

A.J.DESAI, J.: - 1. Rule. Learned APP waives service of notice of Rule on behalf of respondent-State.

2. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant accused has prayed to release him on anticipatory bail in case of his arrest in connection with the FIR registered as **C.R.No. I - 120 of 2019 with Shahibaug Police Station** for the offenses punishable under Sections 395, 294(b) and 506(2) etc. of the Indian Penal Code and under Section 135(1) of the Gujarat Police Act.

3. Learned advocate for the applicant submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. Besides, the applicant is available during the course of investigation and will not flee from justice. In view of the above, the applicant may be granted anticipatory bail.

Learned advocate for the applicant on instructions states 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. He 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.

4. Learned Additional Public Prosecutor appearing on behalf of the respondent-State has opposed grant of anticipatory bail looking to the nature and gravity of the offence.

5. Learned advocates appearing on behalf of the respective parties do not press for further reasoned order.

6. Having heard the learned advocate for the parties. Considering the fact that it is the case of the cross FIR, nobody injured and similar allegations were made in the cross FIR by the neighbors and co-accused of present applicant has been enlarged by the coordinate bench of this Court vide order dated 22.08.2019 passed in Criminal Misc. Application No. 15983 of 2019 and perusing the investigating papers and as well as taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicant. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors.*** as reported at ***[2011] 1 SCC 6941,*** wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of ***Shri Gurubaksh Singh Sibbia & Ors.,*** as reported at ***(1980) 2 SCC 665***.

7. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR registered as **C.R.No. I - 120 of 2019 with Shahibaug Police Station** 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:

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

(b) he shall remain present at concerned Police Station on **18.09.2019** between 11.00 a.m. and 2.00 p.m.;

(c) he 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) he 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) he 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 till further orders;

(f) he shall 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 proper and just and the learned Magistrate would decide it on merits;

8. 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 right of the accused to seek stay against an order of remand, if, ultimately, granted, and the power of 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.

9. 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.

10. Rule is made absolute to the aforesaid extent. Application is disposed of accordingly. Direct service is permitted.

***Result*:-** Bail granted.