

(2023) 11 GUJ CK 0001

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Anticipatory Bail) No. 19882 Of 2022

Amratbhai Pochabhai Rabari

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 03-11-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 114, 409, 420, 465, 467, 468, 471

Gujarat Land Revenue Code, 1879 — Section 73AA

Citation : (2023) 11 GUJ CK 0001

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Gajendra P Baghel, Hardik Mehta, Tahir S Saiyed

Final Decision : Disposed Of

Judgement

Hasmukh D. Suthar, J

[1.0] By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicants accused have prayed to release them on anticipatory bail in the event of their arrest in connection with the FIR being C.R. No.11210064221813 of 2022 dated 20.09.2022 registered with Godadara Police Station, Surat City for the offences punishable under Sections 409, 420, 465, 467, 468, 471 and 114 of the Indian Penal Code, 1860.

[2.0] Learned advocate for the applicants submits that the applicants have nothing to do with the offence and the applicants are falsely implicated in the alleged offence and that though the offence took place 5 to 10 years back, FIR is filed belatedly and no explanation is given for delay lodging of the FIR. Further, in connection with the alleged offence, earlier one complaint being I-CR No.252/2019 was registered with Limbayat Police Station, Surat and in connection with the said FIR, investigation was completed and charge-sheet was filed and the trial is being faced by the present applicants. That, on the same set of facts, verbatim second FIR i.e. the present FIR is filed subsequently. Further,

during the pendency of the present application, the applicants have been protected by the coordinate Bench and applicants have already join the investigation and hence, now nothing remains to be recovered or discovered from the present applicants and therefore, custodial interrogation at this stage is not necessary. Besides, the applicants are available during the course of investigation and will not flee from justice. In view of the above, the applicants may be granted anticipatory bail.

[3.0] Per contra, learned Additional Public Prosecutor as well as the learned advocate for the original complainant have vehemently opposed the present application. Further, though the land was belonging to government and there was restriction under Section 73AA of the Gujarat Land Revenue Code, 1879, as the land was belonging to tribal and therefore, the transaction was void still however, the accused had floated the scheme and showing the map and by misusing the power of attorney of one Chetanbhai, the accused persons have defrauded 17 plot holders and not returned their money and hence, there being prima facie involvement of the present applicants and as custodial interrogation of the applicants is required, they have requested to dismiss the present application.

[4.0] Having heard the learned advocate for the parties and perusing the investigation papers, it is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon'ble Apex Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided. I have considered the following aspects.

- (1) The FIR is filed belatedly;
- (2) On the same set of facts, earlier an FIR being I-CR No.252/2019 was registered with Limbayat Police Station, Surat City wherein charge-sheet is filed and present applicants are shown as accused and trial in connection with the said FIR is going on;
- (3) Nothing is required to be recovered or discovered from the applicants;
- (4) Right to seek remand of the applicants is kept open;
- (5) Applicants were protected by the coordinate Bench since October, 2022.

[5.0] Considering the aforesaid aspects and the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors. reported in (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. reported in (1980) 2 SCC 665 and also the decision in the case of Sushila Aggarwal v. State (NCT of Delhi) reported in (2020) 5 SCC 1, I am inclined to allow the present application.

[6.0] In the result, the present application is allowed by directing that in the event of applicants herein being arrested in connection with the FIR being C.R. No.11210064221813 of 2022 dated 20.09.2022 registered with Godadara Police Station, Surat City, the applicants shall be released on bail on furnishing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) each with one surety of like amount on the following conditions that they:

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

(b) shall remain present at the concerned Police Station on 09/11/2023 between 11.00 a.m. and 2.00 p.m. and the IO shall ensure that no unnecessary harassment or inconvenience is caused to the applicants;

(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 their residence till the final disposal of the case till further orders;

(f) 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;

[7.0] Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicants. The applicants 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. It is clarified that the applicants, 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.

[8.0] At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the applicants on bail.

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