

(2022) 06 GUJ CK 0186
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 11512 Of 2022

Bachubhai Nagajibhai Thakor

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 29-06-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 34, 447

Gujarat Land Grabbing (Prohibition) Act, 2020 — Section 3, 4(3)

Citation : (2022) 06 GUJ CK 0186

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Vicky B Mehta, Manan Maheta

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. Rule. Learned APP waives service of notice of Rule on behalf of respondent State. By consent, Rule is fixed forthwith.

2. The applicants, by way of this application filed under Section 439 of the Code of Criminal Procedure, seek regular bail in connection with the FIR being C.R. No.11195010220348 of 2022 registered with Palanpur West Police Station, Dist. Banaskantha, for the offences punishable under Sections 447 and 34 of the IPC and Sections 3 and 4(3) of the Gujarat Land Grabbing (Prohibition) Act, 2020.

3. It is the submission of Mr. Vicky Mehta, learned counsel for the applicants that they are suffering confinement since 02.06.2022. Hence, further detention of the applicants is unwarranted.

Mr. Mehta, learned advocate for the applicants submitted that the applicants are charged with Sections 447 and 34 of IPC and Sections 3 and 4(3) of The Gujarat Land Grabbing (Prohibition) Act, 2020. The date of offence is in between 15.09.2007 to 01.06.2022. In such circumstances, Mr. Mehta, learned advocate

for the applicants submitted that, the applicants and their forefathers are residing at the place since last 70 years. They have obtained electric connection and other facilities from the Government. They have also applied for regularization of land before the Government. The land in question is allotted to the complainant and therefore, as such, it cannot be said that, the applicants have encroached upon the Government land. It is submitted that substantial investigation is over and therefore, when there are no chances of commencement of trial in near future, the applicants may be enlarged on bail.

4. Mr. Prashant Sharma, learned advocate states that he has instructions to appear for the original complainant and seeks permission to file his Vakalatnama with the Registry. Permission is granted. Registry is directed to accept the same. He has also tendered an affidavit filed by the original complainant which is ordered to be taken on record.

5. Mr. Manan Maheta, learned APP as well as Mr. Prashant Sharma, learned advocate for the original complainant have vehemently opposed the bail application contending that, even after issuing notice by the Deputy Collector, the applicants have not responded and after decision of the Competent Authority, they have filed civil suit which is nothing but an afterthought. Therefore, considering the conduct of the applicants, discretion may kindly not be exercised in favour of the applicants and present application may be rejected.

6. Having considered the contentions raised by learned advocates appearing for the respective parties and the material placed on record, it appears that, it is an admitted fact that, since long the applicants were in possession of the disputed land. Prima-facie, it appears that, the complainant has taken advantage of the new law of land grabbing which came into force in the year 2020. In such circumstances, when substantial investigation is over, keeping the applicants behind bar would not serve any purpose. Therefore, this Court is of the view that the applicants have made out a case for bail.

7. Hence, present application is allowed and the applicants are ordered to be released on regular bail in connection with the FIR being C.R. No.11195010220348 of 2022 registered with Palanpur West Police Station, Dist. Banaskantha, on executing a personal bond of Rs.10,000/-(Rupees Ten thousand only) each, with one surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that they shall;

No.

Conditions

(a)

not take undue advantage of liberty or misuse liberty;

(b)

not act in a manner injurious to the interest of the prosecution;

(c)

surrender passport, if any, to the lower court within a week;

(d)

not leave India without prior permission of the Sessions Judge concerned;

(e)

furnish latest address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of the trial Court;

8. The Authorities will release the applicants only if they are not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the learned Lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law. At the trial, learned Trial Court shall not be influenced by the observations of preliminary nature, qua the evidence at this stage, made by this Court while enlarging the applicants on bail. Rule is made absolute to the aforesaid extent. Direct service is permitted.