

(2023) 05 GUJ CK 0001

In the Gujarat High Court

Case No : R/Special Criminal Application No. 3420 Of 2016

Bansi Babulal Gajjar

APPELLANT

Vs

State Of Gujarat & 1 Other(S)

RESPONDENT

Date of Decision : 01-05-2023

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420, 465, 467, 468, 471

Citation : (2023) 05 GUJ CK 0001

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Pratik Y Jasani, Pranav Trivedi

Final Decision : Disposed Of

Judgement

Ilesh J. Vora, J

1. Rule returnable forthwith. Mr. Pranav Trivedi, learned APP waives service of notice of rule for respondent-State.
2. This application is directed against the order dated 07.05.2016 passed by the learned (Ad-hoc) Principal Civil Judge & Judicial Magistrate (First Class), Lalpur, Jamnagar by which the applicant has been remanded to the police custody for two days.
3. Heard Mr. Pratik Jasani, learned counsel for the applicant and Mr. Pranav Trivedi, learned APP for the respective parties.
4. Pursuant to the FIR bearing FIR being CR.No.I-14 of 2016 registered with Meghpur (Padana) police station for the offences punishable under sections 420, 465, 467, 468, 471 and 120B of the Indian Penal Code. Pursuant to the FIR, vide application dated 07.05.2016, the Investigating Officer prayed for remand of the applicant for the purpose of investigation. The learned trial Court, vide order dated 07.05.2016, after considering the allegations levelled in the FIR and the role attributed to the present applicant, remanded him to the police custody for

about two(02) days.

5. Mr. Pratik Jasani, learned counsel for the applicant, submitted that after completion of the investigation, the chargesheet came to be filed against the accused for the offence, as referred above and now the matter is at the stage of evidence of the prosecution. Therefore, due to lapse of time, the cause virtually does not survive. He further submitted that the entire prosecution case is based on documentary evidence and the same is now part of the chargesheet. The applicant has extended his cooperation to the investigation and furnished all the documentary evidence and whatever information that was available with him. The police remand was sought on the ground of obtaining specimen of signatures of the applicant for its comparison with the documents like agreement to sell. The applicant has already tendered his specimen signature to be sent to the hand writing expert for verification. In such circumstances, learned counsel Mr. Jasani would submit that for the purpose of recovery of documents, the remand cannot be granted. Learned trial Court failed to appreciate this aspect and in casual manner granted police remand, which is contrary to the settled law on the aspect of remand. Learned counsel Mr. Jasani relied on the decision of this Court in the case of *Jairajsinh Temubha Jadeja vs. State of Gujarat*, 2001(1) GLR 215.

6. Learned APP Mr. Pranav Trivedi, for the respondent-State vehemently opposed the application and contended that the learned trial Court has properly exercised the judicial discretion and considering the allegations levelled in the FIR, the police custody of the applicant is necessary and trial Court has satisfied itself that the remand is necessary. Therefore, to complete the investigation, the trial Court has rightly exercised its discretion, which does not warrant any interference at this stage by this Court and, therefore, the application is misconceived and liable to the dismissed.

7. Having heard learned counsel for the respective parties, and on perusal of the impugned order of remand, this Court is of the opinion that most of the grounds mentioned in the remand application are for the purpose of recovery of the documents. It needs to be noted that after completion of the investigation, chargesheet has already been filed before the Court concerned and it culminated into criminal case. The specimen signature of the applicant has already been obtained by the Investigating Officer. It is settled law that the act of directing the remand of an accused is fundamentally judicial function. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the material placed before him justified such a remand or to put it differently, whether there exists reasonable ground to commit the accused to custody and extend his remand. The principle of granting or not granting the remand is always depending upon the facts and circumstances of each case. The remand could not be granted to obtain and/or recover documentary evidence.

8. In the light of the legal proposition of law and considering the peculiar facts and circumstances of the present case, the impugned order dated 07.05.2016 has been stayed by this Court. Thus, when the chargesheet is filed and the same

is at the stage of evidence, this Court is of the opinion that granting police remand of the applicant would not serve the purpose of investigation.

9. In such circumstances, this Court is of the opinion that the application deserves to be allowed and accordingly, it is allowed. Impugned order dated 07.05.2016 passed by learned (Ad-hoc) Principal Civil Judge & Judicial Magistrate (First Class), Lalpur, Jamnagar in connection with FIR being CR.No.I-14 of 2016 registered with Meghpur (Padana), Jamnagar is hereby quashed and set aside qua the applicant. Application stands disposed of. Rule is made absolute accordingly.