

(2012) 12 GUJ CK 0008
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 3737 of 2012 with Criminal Miscellaneous Application No. 3738 of 2012 with Criminal Miscellaneous Application No. 3739 of 2012 with Criminal Miscellaneous Application No. 5281 of 2012

Dhimant Hasmukhbhai Hojiwala

APPELLANT

Vs

Milan Jethalal Seth and 1

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 437, 438, 439(2)
Penal Code, 1860 (IPC) — Section 114, 120B, 120B, 420, 465

Citation : (2012) 12 GUJ CK 0008

Hon'ble Judges : S.G. Gokani, J

Bench : Single Bench

Advocate : Amit V. Thakkar, for the Appellant; Hardik A. Dave, Advocate for the Respondent(s) No. 1 and Public Prosecutor for the Respondent(s) No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Ms. Justice S.G. Gokani

1. All these Applications are directed against the orders passed by the Learned Additional Sessions Judge, Surat, granting anticipatory bail to the respondents accused in a complaint registered as CR No. 1 of 2012 lodged at the DCB police station, Chowk Bazar, Surat for the offences punishable under Sections 420, 465, 467, 468, 471 and 120B read with Section 114 of the Indian Penal Code. For understanding the disputes between the parties, the facts in capsulized form, shall be necessary to be reproduced hereinafter:

The dispute is concerning the land bearing revenue survey no. 132/2, block no. 143 of Village Vanz, Taluka Choryasi, District: Surat (to be referred hereinafter as, "the said land"). This land originally belongs to one Maganbhai Parbhubhai Patel. He agreed to sell the land to Sachin Udhyanagar Sahakari Mandli Ltd. (to

be referred hereinafter as, "Mandali"). Towards the sale consideration, two cheques bearing no. 0913973 for Rs. 25140/- & no. 0913974 for Rs. 24,881/- dated 19.06.1984 were given. When the Bank of Baroda issued a certificate of clearance of the charges of the bank, Maganbhai Parbhubhai executed a power of attorney on 22nd June 1984 in favour of Umedbhai Ganpatrai Jariwala. A notification was issued u/s 88(1)(B) of the Tenancy Act by the State Government on 14th November 1991, reserving the land for non-agricultural and industrial purpose.

2. A registered sale deed was executed by Maganbhai Parbhubhai through Power of attorney holder on 23rd December 1991 in favour of Mandali and a mutation entry was effected on 7th August 1996 and the same was subsequently cancelled. On 4th December 1997, the land was amalgamated with other lands of the Mandali and the development permission was granted by SUDA and thereafter plots no. A/2/13 and 1/2/14 were formed. Plot no. A/2/13 was allotted to Piyushbhai Jaswantbhai Patel and another plot No. A/2/14 was allotted to Gopalidevi Nandani. In September 2010, Piyush Jaswantbhai Patel transferred his land by a registered sale deed in favour of Manish Packaging Pvt. Limited.

3. It is alleged that the subject land is owned and possessed by the Society/ Mandali since 1991 and the land form part of the vast Industrial Estate of the Society and the same has been developed in accordance with law.

4. In this background, it is alleged that the respondents in collusion with each other, created forged documents of the suit land with a malafide intention to extract money from the Society, committed offences as alleged in the complaint.

5. It is alleged that on 9 February 2011 Ramanbhai Maganbhai Patel and Maganbhai Patel (accused no. 1 and 2) through their power of attorney holder Manoj Dhansukhbhai Patel (accused no. 3) executed an agreement to sell in favour of Milan Jethalal Sheth (accused no. 4). A public notice was published on 14th February 2011 by Shri Suresh J. Jariwala, advocate, inviting objections for sale of the land by accused no. 1 and 2. On 23rd February 2011, another agreement to sale was executed in favour of accused no. 4.

6. On 8th March 2011, accused nos. 1 and 2 through their power of attorney holder-accused no. 3 executed registered sale deed in favour of Jayshreeben Virajbhai Natali (accused no. 5). The society, having learnt of the public notice, replied on 13th March 2011, by stating that the land was sold by the original owner in the year 1991. The notice was also sent on 14th March 2011 and on 16th March 2011. Deed of cancellation was executed, cancelling the agreement to sale. In favour of accused no. 4 on 29th March 2011, accused no. 5 executed a power of attorney of the suit land. On 30th March 2011, a complaint u/s 145 of the Cr. P.C. was made by the accused no. 5 through her power of attorney holder accused no. 4 and by accused no. 1 and 2 through their power of attorney holder accused no. 3. Cross civil suits were filed and the complainant herein, who is the Director of the Society, filed a criminal complaint being CR No. I-1/2012 on 7th

January 2012 with police station, Chowk Bazar, Surat, u/s 420, 465, 467, 468, 471 & 120-B of the Indian Penal Code.

7. The accused no. 4 preferred Criminal Misc. Application no. 322 of 2012 seeking quashment of the criminal complaint. Further the said petition was disposed of as with drawn on 12th January 2012.

8. Accused no. 4 also sought anticipatory bail being no. 244 of 2012 before the 2nd Additional Sessions Judge, Surat, whereby he was granted anticipatory bail on certain conditions.

9. It was alleged by the complainant that the accused no. 4 has a prime role behind the entire fraud. He was also absconding and was not making himself available for investigation. Likewise, accused no. 5-Jayshreeben Virajbhai Natali filed an Criminal Misc. Application No. 84 of 2012, before the Additional Sessions Judge, Surat, seeking bail and she was granted bail on 25th January 2012 on certain conditions and the same is under challenge, as well.

10. Accused no. 3 Manoj Dhansukhbhai Patel and accused no. 1 Ramanbhai Maganbhai Patel (since deceased) preferred application for anticipatory bail and accused no. 3 Manoj Dhansukhbhai Patel was granted anticipatory bail in Criminal Misc. Application No. 270 of 2012 on certain conditions. Viraj Ramjibhai Natali (accused no. 6) was granted bail in Criminal Misc. Application no. 569 of 2012.

11. This grant of anticipatory bail in favour of all the accused-respondents herein is challenge by way of these Criminal Misc. Applications u/s 439(2) of the Criminal Procedure Code.

12. For the complainant-petitioner herein, learned Senior Advocate Shri Rashes Sanjanwala emphasized on the affidavit filed by the investigating officer, wherein, he has relied upon various documents, drawing the attention of the court to the point that the respondents-accused in collusion with one another have created the forgery essentially to grab the suit land which was already sold to the society in the year 1994. According to the investigating officer, accused no. 4 has played pivotal role and the power of attorney executed by the accused no. 5 Jayshreeben Virajbhai Natali in favour of accused no. 4 was also required to be obtained from these accused.

13. Learned Senior advocate also contended that in the order impugned, no reasons have been recorded which can reflect the consideration of the court. He also further referred to the order impugned to point out that the court ought to have taken into consideration the relevant aspects like the nature and gravity of offence/circumstances under which offence was conspired, the role attributed to each of the accused, before granting anticipatory bail in favour of such persons. There are past antecedents against the accused no. 4 who is a well known land grabber, accordingly he urged the court to cancel the bail application.

14. Learned advocate Shri Dave appearing for these respondents urged that

some of the accused remained in police custody for two days and they cooperated in the investigation. On 27th June 2012, chargesheet has already filed. There is no whisper on merits of agreement to sale which has been cancelled, and the notice have been given. When nobody objected to the same, the registered sale deed was executed. Thus, it can not be said that unilaterally there was cancellation after 30 days of agreement to sale. Notice was replied to on 13th March 2011, and hence Civil Suits pending in respect of suit land and the litigation before the revenue authorities are going on.

15. Ms. Kruiti Shah learned advocate appearing for accused no. 5 and 6 Jayshreeben Virajbhai Natali and Virazj Ramjibhai Natali referred to the impugned order and submitted that these respondents have two children and they have no role to play, as they are bonafide purchasers who had purchased after issuing the notice. However, the notice was not responded to on 13th March, as prior to such response a documents was executed in their favour.

16. On the instruction from the investigating officer, learned APP urged that the original documents have not been produced by the accused and the photo copies have been given to investigating officer.

17. On thus having heard the learned advocates for the parties and having regard to the submissions and after closely examining the order impugned and the material on the record, for the reasons given hereinafter these petitions have no merits for acceptance.

18. At the outset, it is required to be noted that there are more and more disputes concerning the land resulting into lodging of criminal complaints and thus the parties which are litigating on civil side also choose to lodge criminal complaints in respect of the very land. At the same time, it is also required to be noted that the incidents of land grabbing are on rise with the price of the land going up. All these petitions are directed against the orders passed by the Learned Additional Sessions Judge, Surat, granting anticipatory bail to the respondents accused in a complaint registered as CR No. 1 of 2012 filed in the DCB police station, Chowk Bazar, Surat for the offences punishable under Sections 420, 465, 467, 468, 471 and 120B read with Section 114 of the Indian Penal Code.

19. Undoubtedly, for the same subject of land, civil suits as well as proceedings before the revenue authorities are pending. This is of course not to indicate that the same would lesser gravity of offences if otherwise the law so provides. Nonetheless, the court while granting discretionary relief can not disregard such aspects.

20. From the documents brought on record it is also clear that the attempt on the part of the respondents to get the complaint quashed did not succeed as the court chose to dismiss such request in Criminal Misc. Application No. 322 of 2012.

21. This could indicate prima-facie that the complaint is not without the

substance and basis, however, the court while exercising the discretion for grant of anticipatory bail shall have to regard the criteria laid down u/s 438 of the Criminal Procedure Code, which is being reproduced below:

438. Direction for grant of bail to person apprehending arrest : (1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he 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; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail;

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application. (1A) Where the court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
- (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

22. It has been rightly pointed out by the learned senior advocate for the petitioner-complainant, that, every time, while exercise discretion for grant of anticipatory bail, the court shall have to record the gravity of offence, the nature of crime, the role attributed to the accused in the complaint as also from the papers of investigation etc., and thereafter the court concerned shall have to apply the well settled principles on the subject to the facts of the each case. While, examining the order impugned, it would be profitable to mention at this stage that the principles for grant of bail are different than the criteria laid down for cancellation of bail and the same has been laid down in Catena of judgments.

23. It would be worthwhile to refer the judgment rendered in case of Dinesh M.N. (S.P.) Vs. State of Gujarat, . Relevant paragraph no. 23 to 25 is quoted below:

23. Even though the re-appreciation of the evidence as done by the court granting bail is to be avoided, the court dealing with an application for cancellation of bail u/s 439(2) can consider whether irrelevant materials were taken into consideration that is so because it is not known as to what extent the irrelevant materials weighed with the court for accepting the prayer for bail.

24. In Puran V. Rambilas it was noted as follows:

11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in Gurcharan Singh V. State (Delhi Admn). In that case the Court observed as under: (SCC p. 124, para 6)

16...If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions judge if certain new circumstances have arisen which were not earlier known to [the State and necessarily, therefore, to that court the State may as well approach the High Court being the superior however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have

cropped up except those already existing, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. this position follows from the subordinate position of the Court of Session vis-?-vis the High Court.

25. The perversity as highlighted in Puran case can also flow from the fact that as noted above, irrelevant materials have been taken into consideration adding vulnerability to the order granting bail. The irrelevant materials should be of a substantial nature and not of a trivial nature.

24. In the order impugned, the court noted the fact that an agreement to sale dated 9th February 2007 though was executed by the sons of the original owner namely Ramanbhai Maganbhai Patel and Dhansukhbhai Maganbhai Patel and the same was cancelled on 16th March 2011 and thereafter, a registered sale deed was executed in favour of the respondent Jayshreeben and she had executed a power of attorney in favour of the accused no. 4 Milan Jethalal Seth. Pendency of the civil and revenue litigations weighed with the court and also the principles laid down in case of Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, . As far as accused no. 5 is concerned, when her bail application being Cr. M.A. No. 84 of 2012 was decided the court noted that this respondent purchased the disputed land from the heirs of the erstwhile owner and when she purchased the land, name of the first informant did not reflect in the revenue record.

25. Accused nos. 2 and 3 were allowed to be enlarged on bail in Criminal Misc. Application no. 270 of 2012. The court noted that there was a custodial remand given by the court to these respondents and necessary inquiry was already made and keeping in mind the respective roles in the alleged offence, they were granted bail.

26. Accused no. 6 also was found to be in judicial custody alongwith other co-accused against whom the charges of grabbing of land were levelled and when enlarged on bail, the court found that this accused no. 6 was entitled for grant of regular bail.

27. Thus, it appears that except accused no. 4, all other accused have been granted regular bail by the court and their custodial interrogation also was sought for by investigating agency. However, chargesheet has been submitted during the course of hearing of these petitions that shows that some of the original documents are yet to be obtained from the accused.

28. Only the accused in whose favour the anticipatory bail has been granted is accused no. 4 Milan and the court has permitted the investigating officer to take custodial interrogation; if found necessary.

29. It is a fact that the power of attorney has been given by both accused nos. 5 and 3 in favour of these accused and yet, when there is sufficiency of conditions laid down by the court and keeping in mind the fact that the charge-sheet has

already been filed on 27th June 2012 and the dispute essentially concern the land and is predominantly based on documentary evidences, this court finds no contradictory circumstances and reasonings for cancellation of bail once granted on merit.

30. As far as other accused are concerned, their custodial interrogation have been sought and investigation has culminated, into the charge-sheet against all these respondents. It is not the case of either side that in post bail period or otherwise, accused respondents have not cooperated with the investigating agency and also there is no apprehension of tampering with the witnesses. It would not be possible to hold that the order impugned is based on irrelevant materials or disregarding relevant documents. Neither on merit nor on conduct in post bail period, order can be termed vulnerable.

31. Resultantly, these petitions for the reasons stated above are not entertained. It would be essential however, to add a condition which shall operate in case of each of the respondents.

32. The respondents shall not enter the suit land nor deal with the same, any mode or manner till the final outcome of the criminal complaint no. 1 of 2012. With these observations, all these applications stand dismissed. No costs.