

(2022) 06 GUJ CK 0193
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 10767 Of 2022

Gaurangbhai Nathalal Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 30-06-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 120B, 406, 420

Citation : (2022) 06 GUJ CK 0193

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : R R Marshal, Ashish M Dagli, Ronak Raval

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Senior Advocate Mr. R.R. Marshal appearing with learned Advocate Mr. Deepak P. Sanchela for the applicants, learned Additional Public Prosecutor Mr. Ronak Raval on behalf of the respondent-State and learned Advocate Mr. Ashish Dagli for the respondent No.2- first informant.

2. Rule. Learned APP Mr. Raval waives service of rule on behalf of the respondent-State and learned Advocate Mr. Dagli waives service of rule on behalf of the respondent No.2.

3. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicants pray for being released on anticipatory bail in connection with FIR No. 11211005220103 of 2022 registered with Patdi Police Station, District Surendranagar, on 20.05.2022 for offences punishable under Sections 406, 420 and 120B of the Indian Penal Code.

4. Learned Senior Advocate Mr. R.R. Marshal for the applicants would submit as noted by this Court vide order dated 23.06.2022, the parties have settled the

dispute and whereas the document in question i.e. the sale deed whereby the land of the first informant was sold to the present applicants, has been cancelled and the transaction is reversed. Having regard to such a situation, learned Senior Advocate would submit that the present applicants may be released on anticipatory bail by this Court.

Learned Senior Advocate Mr. Marshal for the applicants on instructions states that the applicants are 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 their remand. Learned Advocate would further submit that upon filing of such application by the Investigating Agency, the right of applicants-accused to oppose such application on merits may be kept open.

5. Learned Advocate Mr. Ashish Dagli for the first informant would support the submissions of learned Senior Advocate Mr. Marshal and would submit that in fact the document in question is cancelled and the transaction in question is reversed and the land is now in the ownership of the first informant.

6. This application has been vehemently opposed by learned Additional Public Prosecutor Mr. Raval appearing on behalf of the respondent-State, who would submit that prima facie a fraud had been committed and merely because the document in question has been cancelled, that would not in any way dilute the seriousness of the incident. Learned APP would therefore submit that applicants may not be released on anticipatory bail by this Court.

7. Having heard the learned Advocates for the parties and having considered the documents on record, the following aspects are considered by this Court:

[1] That the applicants i.e. the purchasers of the property in question having cancelled the sale deed in question and having reversed the transaction.

[2] That from the initiation of the FIR itself, the case of the applicants being that the applicants had paid the full amount, and whereas there was mischief at the end of the persons who were stated to be acting as brokers or facilitators to the transaction in question.

8. In this view of the matter and considering the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors. reported in (2011)1 SCC 694, this Court is inclined to consider this application.

9. In the result, the present application is allowed by directing that in the event of applicants herein being arrested pursuant to the FIR No. 11211005220103 of 2022 registered with Patdi Police Station, District Surendranagar, 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:

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

(b) shall remain present at the concerned Police Station on 06.07.2022 between 11:00 a.m. and 2:00 p.m.;

(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 or till further orders;

(f) shall not leave India without the permission of the Court and, if having passports shall surrender the same before the Trial Court within a week.

10. Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicants to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. 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. 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 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.

11. 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. Rule is made absolute to the aforesaid extent.

Direct service is permitted.