

(2021) 08 GUJ CK 0010

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 8571 Of 2021

Jigneshbhai Arvindbhai Prajapati

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 02-08-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 120B, 420, 465, 467, 468, 471
Gujarat Land Revenue Code, 1879 — Section 135(D)

Citation : (2021) 08 GUJ CK 0010

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Gajendra P Baghel, Dharmesh Devnani

Final Decision : Allowed

Judgement

A.S. Supehia, J

1) Heard the learned advocates for the respective parties through video conferencing.

2) The present application is filed under Section 439 of the Code of Criminal Procedure in connection with an FIR being C.R.No.I-11214020210094 of

2021 registered with Kamrej Police Station, Surat Rural District Surat for offences punishable under Sections 420, 120(B), 465, 467, 468 and 471 of

the Indian Penal Code, 1860 (â?? the IPCâ??).

3) The facts as narrated in the FIR are that, the first informant has two ancestral agricultural lands bearing Block No.2921, Survey No.315 and Block

No.47, Survey No.379 respectively, both situated at Kholvad village and the same run in the name of first informant and his wife and his other four

sisters jointly. It is stated that on 15.12.2020, the first informant was in receipt

of a notice under Section 135(D) of the Gujarat Land Revenue Code, 1879 from the Mamlatdar pertaining to release of encumbrance and another for mutation of entry of a sale-deed, wherein along with name of the first informant and his wife and sisters, as accused no.3 to 6 were mentioned. It is alleged that the first informant applied to get copies under the RTI since he smelt something fishy.

3.1 It is further alleged that on 21.12.2020, the first informant received two power of attorneys and two sale deeds from the office of Mamlatdar and the first informant found that accused no.1 is a power of attorney holder of both powers are dated 21.02.2014 and 20.12.2018 pertaining to aforesaid two lands, whereas other accused persons have signed as witnesses and are identifier and notary. It is further alleged that the accused no.1 has also executed a declaration dated 22.10.2020 and accused no.2 has put her signature as witness. It is further alleged that both the power of attorneys are not executed by the first informant or his wife or any of his sisters and thus, accused no.1 has created bogus power of attorney.

3.2 It is further alleged that the accused no.1, in connivance with other co-accused persons, despite one of the sisters-Naynaben is in America, a bogus power is created by forging her signature and thumb impression and the bogus powers have been misused as correct and bogus sale deeds have been executed and thus, upon the aforesaid allegations, the FIR came to be filed.

3.3 It is further submitted that during the course of investigation in the aforesaid FIR, the name of the applicant came to be disclosed from the statement of the co-accused and he was arrested on 24.02.2021 by the Investigation Officer and he was also sent to the police remand and upon conclusion of investigation by the Investigation Officer, after collecting documentary evidence and recording statements of witnesses, charge-sheet came to be filed before the concerned Court.

4) Learned advocate Mr. Baghel appearing for the applicant has submitted that the co-accused has already been released by this Court vide order dated 02.07.2021 passed in Criminal Misc. Application No. 8328 of 2021. He has further submitted that the applicant did not obtain any benefits from the alleged offence. It is also submitted that it is not the case of the prosecution that he has received any amount from entire offences. It is submitted that the allegations from papers of the charge-sheet reveal that, he has

introduced other accused personally with accused no.1, who is son of the first informant, who is the main perpetrator of the entire offence.

5) Learned advocate of the applicant has further submitted that the entire scam was organized by accused no.1 in order to siphon the amount of his

father and the amount was distributed amongst accused no.1 to accused no.6. Lastly, it is urged by the learned advocate for the applicant that

considering the aforesaid aspects of the case, the applicant may be released on bail.

6) Learned Additional Public Prosecutor appearing on behalf of the respondent-State has opposed and has submitted that in fact the applicant has

played positive role in the entire scam and therefore, the applicant may not be granted regular bail considering the nature and gravity of the offence.

7) Having perused the materials placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role

attributed to the accused, without discussing the evidence in detail, at this stage, this Court is inclined to grant regular bail to the applicant. This Court

has considered following aspects;

(i) The role attributed to the applicant;

(ii) The Co-accused has been released by this Court vide order dated 02.07.2021 passed in Criminal Misc. Application No. 8328 of 2021;

(iii) Prima facie, it appears that the role of the applicant is of introducing other co-accused;

(iv) Prima facie, it appears from the investigation that the applicant has not received any monetary benefits;

(v) The property in question is lying with the complainant;

(vi) The nature of allegation are such for which custodial interrogation of the applicant is not necessary at this stage;

(vii) The applicant is behind bars since 24.02.2021.

8) This Court has also taken into consideration the law laid down by the Apex Court in the case of Sanjay Chandra Vs. Central Bureau of

Investigation, (2012) 1 SCC 40.

9) In the result, the present application is allowed and the applicant is ordered to be released on regular bail in connection with an FIR being C.R.No.I-

11214020210094 of 2021 registered with Kamrej Police Station, Dist. Surat

Rural, on executing a personal bond of Rs.10,000/-(Rupees Ten Thousand Only) with one local surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that he shall;

- (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 his passport, if any, to the lower court within a week;
- (d) not leave the State of Gujarat without prior permission of the concerned Trial Court;
- (e) mark presence before the concerned Police Station on alternate every Monday for initial six months and thereafter, on alternate Monday of every English calendar month, for a period of six months, between 10:00 a.m. and 2:00 p.m.;
- (f) 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.

10) The Authorities will release the applicant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the concerned Trial Court will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the Trial Court having jurisdiction to try the case.

11) 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 applicant on bail. Rule is made absolute accordingly.

12) Registry is directed to intimate the concerned jail authority and the concerned Sessions Court about the present order by sending a copy of this order through Fax message, email and/or any other suitable electronic mode.

13) Learned advocate for the applicant is also permitted to send a copy of this order to the concerned jail authority and the concerned Sessions Court through Fax message, email and/or any other suitable electronic mode.