

(2022) 09 GUJ CK 0086

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 12390, 12404 Of 2022

Kamuben Somaji Bhavaji Thakore

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 14-09-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 41, 41(1)(b)(ii), 41A, 438, 439(2)
Indian Penal Code, 1860 — Section 120B, 406, 420, 498A
Dowry Prohibition Act, 1961 — Section 4

Citation : (2022) 09 GUJ CK 0086

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Jayesh Dave, Varun G Rai, Maithili Mehta

Final Decision : Dismissed

Judgement

Dr. Ashokkumar C. Joshi, J

1. As both these applications arise out of the same FIR, the same were heard together and are being decided by this common judgment.

2. These applications are filed under Sections 439(2) of the Criminal Procedure Code, 1973 (CrPC) seeking cancellation of bail granted to the respondent No. 2 in the present applications – original accused by orders dated 07.05.2022 passed in Criminal Misc. Application Nos. 2491 of 2022 and 2492 of 2022 by the learned City Civil and Sessions Judge, City Civil and Sessions Court No. 5, Ahmedabad, whereby, the learned City Civil Judge was pleased to grant anticipatory bail the respondent No. 2 – original accused, for the alleged offence punishable under Sections 406, 420, 120-B of the Indian Penal Code, 1860 (IPC) for which, FIR No. 11191024220319 registered Ahmedabad City.

3. Heard, learned advocate Mr. Jayesh Dave for learned advocate Mr. Varun G. Rai for the applicant – original complainant and learned Additional Public Prosecutor for the respondent No. 1 – State.

3.1 The learned advocate for the applicant – original complainant vehemently submitted that despite the respondent No. 2 having been arraigned for a serious offence of cheating and breach of trust, the learned City Civil Judge has granted anticipatory bail to them, despite there being prima facie case against the accused persons. He submitted that the complainant had sold the land in question to the respondent No. 2 – Rameshbhai Ravjibhai Dobariya (in Criminal Misc. Application No. 12390 of 2022) through Ankitbhai Rameshbhai Sojitra (respondent No. 2 in Criminal Misc. Application No. 12404 of 2022), and she was paid Rs.28,86,000/- by cheque and Rs.6 lakh in cash and rest would be payable after effecting necessary mutation entries. It is further submitted that on account of Special Civil Suit No. 335/2011 was going on between the original complainant and her cousin brother and as the injunction was granted in the said suit, the original complainant, on a request made by purchaser - Rameshbhai Ravjibhai Dobariya (respondent No. 2 in Criminal Misc. Application No. 12390 of 2022), the said sale deed No. 3948 got cancelled and returned the money to him on 05.11.2018. However, the complainant, later came to know that the said purchaser (Rameshbhai Ravjibhai Dobariya) got executed another sale deed No. 3949 from the complainant in the name of others (5 in number) for a consideration of Rs.3.80 crore. Further, the said five persons executed a registered agreement to sell being No. 439 on 04.02.2020 in favour of Ankit Rameshbhai Sojitra, the respondent No. 2 in Criminal Misc. Application No. 12404 of 2022 for the land in question for a sale consideration of Rs.35 lakh out of which, Rs.5 lakh was given by cheque. In such a factual scenario, the learned advocate for the applicant submitted that there was a clear case against the respondent Nos. 2 herein, however, the learned trial Judge has, without taking into consideration the objections of the original complainant, granted anticipatory bail to the accused persons and thereby, has wrongly exercised the discretion in favour of the accused.

3.2 The learned advocate for the applicant – original complainant further submitted that surprisingly Ambabhai Popatbhai Vataliya and others, who had purchased the land in question from the respondent No. 2 – Rameshbhai Ravjibhai Dobariya (in Criminal Misc. Application No. 12390 of 2022) for Rs.3.80 crores, have executed an agreement to sell in favour of Ankit Rameshbhai Sojitra (respondent No. 2 in Criminal Misc. Application No. 12404 of 2022) for the land in question for a sum of Rs.35 lakh which is highly improbable and from such a transaction, the intention of the respondent No. 2 in these cases, clearly transpires to be mala fide., however, the learned Court below has failed to considered such an important aspect of the matter and thereby, has committed error in granting anticipatory bail to the respondents – accused. It is submitted that the learned Court below has failed to take into consideration a material aspect that the original complainant has not gotten anything out of the transaction, whereas, the culprits are enjoying the fruits.

3.3 The learned advocate for the applicant – original complainant submitted that looking to the nature and gravity of offence for which, the accused persons are

arraigned, the learned Court below ought not to have granted anticipatory bail as there are all chances of tampering and hampering with the evidence and it may cause serious prejudice to the case of the prosecution.

3.4 Making above submissions, it is urged that this application may be allowed, setting aside the impugned orders granting anticipatory bail to the respondent No. 2 – original accused.

3.5 In support, the learned advocate for the applicant – original complainant has relied upon a decision of the coordinate Bench of this Court in *State of Gujarat v. Dolly Kantilal Patel*, MANU/GJ/1387/2018.

4. The Court has also heard the learned Additional Public Prosecutor for the respondent No. 1 – State.

5. Having regard to the submissions made and considering the material on record vis-a-vis the orders impugned herein, it appears that accusation against the respondent No. 2 herein is for the offence punishable under Sections 406, 420, 120-B, IPC for which, they have been granted anticipatory bail by the learned Court below against which, the grieved complainant is before this Court praying for cancellation of bail.

5.1 In this regard, it would be apt to refer to a decision of the Apex Court in *Arnesh Kumar v. State of Bihar*, MANU/SC/0559/2014, wherein, it is held as under:

"Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498 A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C.;

(2) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for Further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the District

for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Cr.P.C. be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction;

(8) Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498 A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine."

5.1.1 Thus, where the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine, it was endeavoured by the said decision to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically.

5.2 Further, in a very recent decision in *Vivekanand Mishra v. State of U.P. and Ors.*, MANU/SC/1133/2022, the Apex Court has observed as under:

"12. The power to grant bail Under Section 438 of the Code of Criminal Procedure may be discretionary. However, discretion to grant bail has to be exercised judiciously, as held by this Court in *Ram Govind Upadhyay v. Sudarshan Singh and Ors.* reported in MANU/SC/0203/2002 : (2002) 3 SCC 598. speaking for the Court, Umesh Chandra Banerjee, J. said:

3. Grant of bail though being a discretionary order--but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the Accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail-- more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the Accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the Accused is entitled to an order of bail.

13. In *Prasanta Kumar Sarkar v. Ashis Chatterjee and Anr.* reported in MANU/SC/0916/2010 : (2010) 14 SCC 496, D.K. Jain, J., speaking for a two-Judge Bench of this Court laid down the principles for examining the correctness of orders granting bail to an Accused. This Court held:

9. ...It is trite that this Court does not, normally, interfere with an order [*Ashish Chatterjee v. State of W.B.*, CRM No. 272 of 2010, order dated 11- 1-2010 (Cal)] passed by the High Court granting or rejecting bail to the Accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the Accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the Accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the Accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal.

14. In *Mahipal v. Rajesh Kumar and Anr.* reported in MANU/SC/1677/2019 : (2020) 2 SCC 118, this Court held:

14. The provision for an Accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the Accused had committed the offence, the nature and gravity of the offence and the likelihood of the Accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the Accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.

15. In *Sanjay Chandra v. Central Bureau of Investigation* reported in MANU/SC/1375/2011 : (2012) 1 SCC 40, this Court held:

24. In the instant case, we have already noticed that the "pointing finger of accusation" against the Appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the Appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice".

25. The provisions of Code of Criminal Procedure confer discretionary jurisdiction

on criminal courts to grant bail to the Accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general.

16. In *Siddharam Satlingappa Mhetra v. State of Maharashtra and Ors.* reported in MANU/SC/1021/2010 : (2011) 1 SCC 694) rendered in the context of the discretion to grant Anticipatory Bail Under Section 438, this Court advocated the need to balance individual personal liberty with societal interest. This Court held:

84. Just as liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. Both are equally important.

17. There is no straight jacket formula for grant or refusal of bail. Seriousness of the charge is undoubtedly one of the relevant considerations while considering bail applications. All the relevant factors have to be weighed by the Court considering an application for bail, including the gravity of the offence, the evidence and material which prima facie show the involvement of applicant for bail in the offence alleged, the extent of involvement of the applicant for bail, in the offence alleged, possibility of the applicant Accused absconding or otherwise defeating or delaying the course of justice, reasonable apprehension of witnesses being threatened or influenced or of evidence being tampered with, and danger to the safety of the victim (if alive), the complainant, their relatives, friends or other witnesses.

18. xxx

19. xxx

20. In *Dolat Ram (supra)*, this Court held:

4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted.

Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the Accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the Accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the Accused to retain his freedom by enjoying the concession of bail during the trial."

5.3 Yet in another recent decision in *Manisha v. State of Rajasthan and Ors.*, MANU/SC/0498/2022, the Apex Court has observed as under:

"11. Once bail has been granted, the Appellate Court is usually slow to interfere with the same as it pertains to the liberty of an individual. A Constitution Bench of this Court in Bihar Legal Support Society v. Chief Justice of India, MANU/SC/0163/1986 : (1986) 4 SCC 767 observed as follows:

3. ... It is for this reason that the Apex Court has evolved, as a matter of self-discipline, certain norms to guide it in the exercise of its discretion in cases where special leave petition are filed against orders granting or refusing bail or anticipatory bail....We reiterate this policy principle laid down by the bench of this Court and hold that this Court should not ordinarily, save in exceptional cases, interfere with orders granting or refusing bail or anticipatory bail, because these are matters in which the High Court should normally be the final arbiter.

(emphasis supplied)

12. The above principle has been consistently followed by this Court. In Prasanta Kumar Sarkar v. Ashis Chatterjee, MANU/SC/0916/2010 : (2010) 14 SCC 496 this Court held as under:

9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the Accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the Accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the Accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the Accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

xxx xxx xxx

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal....."

6. Adverting the case on hand keeping in mind the aforesaid settled legal

position, the respondents – accused are arraigned as accused for the offence punishable under Sections 406, 420, 120-B, IPC for which, they have been released on anticipatory bail by the learned Court below. Considering the overall facts and circumstances of the case vis-a-vis the settled legal position as enumerated herein above, following aspects have been weighed with by the Court:

- i) the accused are arraigned for the offence punishable under Sections 406, 420, 120-B, IPC for which, maximum punishment prescribed for is seven years to which, decision of the Apex Court in Arnesh Kumar (supra) squarely applies;
- ii) it is not the case of the applicant – original complainant that the respondents – accused have breached any condition of bail granted to them;
- iii) it is also not the case of the applicant – original complainant that the accused have tampered and/or hampered or tried to do so, with the evidence;
- iv) it is also not a case that the respondents – accused may flee from justice;
- v) the respondents – accused appear to be well placed in society;
- vi) there appears nothing to show that the respondents – accused have misused their liberty and indulged in similar criminal activity after securing the bail order;
- vii) the dispute prima facie appears to be of civil in nature;
- viii) as observed in the impugned orders, the complaint in question has been filed after a period of four years i.e. for the transaction which had occurred in 2018, the complaint is filed in the year 2022;
- ix) the case projected for cancellation of bail by the applicant – original complainant appears to have been rested only on the presumption;
- x) the respondent - accused are yet to go through the test of trial;
- xi) it is trite law that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

7. In view of the above, the Court finds no reason to interfere with the order granting anticipatory bail to the respondents – accused.

8. The Court has gone through the decision relied upon by the learned advocate for the applicant – original complainant. There cannot be any dispute with regard to the ratio laid down in the same. However, it is trite that grant of bail though being a discretionary order but, however, calls for exercise of such a discretion in a judicious manner and is dependent upon the contextual facts of the matter being dealt with by the Court and facts, however, do always vary from case to case.

9. For the forgoing observations and discussion, the present applications fail and

are dismissed accordingly, in limine.