

(2022) 10 GUJ CK 0074

In the Gujarat High Court

Case No : ?R/Criminal Misc.Application No. 18841 Of 2022

Mangalbhai Shankarbhai Chauhan

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 12-10-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

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

Citation : (2022) 10 GUJ CK 0074

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Pruthvirajsinh V Solanki, Ronak Raval

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr. Pruthvirajsinh V. Solanki on behalf of the applicants and learned Additional Public Prosecutor Mr. Ronak Raval on behalf of the respondent-State.

2. Rule returnable forthwith. Learned APP waives service of Rule on behalf of the respondent-State.

3. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicants – original accused pray for being released on anticipatory bail in connection with FIR No. 11207002220354 of 2022 registered with Godhra 'B' Division Police Station, District: Panchmahal on 01.08.2022 for offences punishable under Sections 465, 467, 468, 471, 120B of the Indian Penal Code.

4. Learned Advocate Mr. Solanki for the applicants would submit that the applicants are witnesses to a transaction in which transaction it is alleged that two persons were impersonated. It is submitted that other parties to the

transaction being close relatives of the persons who had allegedly been impersonated, having not objected at the time of the sale, the present applicants were under a bona fide impression that all the persons present were genuine persons. It is also submitted that this Court has considered the case of a person who was an agent to the transaction, more particularly since the parties are stated to have settled the dispute inter-se and whereas learned Advocate also relies upon a settlement deed under the title Samtipatra/ Kabulatpatra, whereby the allegedly impersonated persons have ratified the transaction. Learned Advocate Mr. Solanki would submit that the nature of allegations are such for which custodial interrogation of the applicants at this stage may not be necessary. Besides, the applicants are available during the course of investigation and will not flee from justice. In view of the above, the applicants may be granted anticipatory bail.

Learned Advocate Mr. Solanki 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 Additional Public Prosecutor Mr. Raval appearing on behalf of the respondent-State has opposed grant of anticipatory bail looking to the nature and gravity of the offence.

6. Having heard the learned Advocates for the parties, following aspects are considered by this Court:

[1] That the applicants are stated to be witnesses to a transaction and whereas it appears that the transaction was by around 18 persons of the same family. It appears that there is an allegation about two persons of the family being impersonated and whereas it appears that at the time of the transaction none of the other family members had objected and whereas the present applicants as witnesses could have been under a bona fide impression that all the persons are real and genuine persons.

[2] It also appears that before filing of the FIR the parties i.e. the original land owners have settled the matter with the alleged impersonated persons and whereas it appears that the said persons have not objected with regard to the sale deed in question being mutated in the revenue record.

[3] It also appears that by way of a registered deed, the persons whose identity had been impersonated had also settled that matter with the purchaser of the property.

[4] It also appears that this Court had considered the case of co-accused vide order 12.09.2022 in Criminal Misc. Application No. 15972 of 2022.

[5] That the applicants are not having any criminal antecedents.

7. Having regard to the circumstances in question, 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.

8. In the result, the present application is allowed by directing that in the event of applicants herein being arrested pursuant to FIR No. 11207002220354 of 2022 registered with Godhra 'B' Division Police Station, District: Panchmahal, the applicants shall be released on bail on furnishing a personal bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) each with one surety of like amount, on the following conditions that the applicants :

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

(b) shall remain present at the concerned Police Station on 17.10.2022 between 11:00 a.m. and 2:00 p.m.;

(c) shall mark his presence at the concerned Police Station once in a month for a period of next three months;

(d) 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;

(e) 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;

(f) shall at the time of execution of bond, furnish the address to the Investigating Officer and the Court concerned and shall not change his residence till the final disposal of the case or till further orders;

(g) 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.

9. 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 applicant 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 applicant, 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.

10. 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.