

(2024) 05 GUJ CK 0012
In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Anticipatory Bail) No. 7841 Of 2024

Manish Ambalal Padmani

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 02-05-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Citation : (2024) 05 GUJ CK 0012

Hon'ble Judges : J. C. Doshi, J

Bench : Single Bench

Advocate : Hriday Buch, Dr Venugopal H Patel, Kushal R Shah, Maqbulahmed A Saiyed, A N Pathan, HK Patel

Final Decision : Allowed

Judgement

J. C. Doshi, J

1. Heard learned advocate Mr.Hriday Buch with learned advocate Venugopal Patel for the petitioner, Mr.A.A.Zabuawala for the complainant and learned APP Mr.H.K.Patel for the respondent - State.

2. By way of the present petition under Section 438 of the Code of Criminal Procedure, 1973, the petitioner has prayed to release him on anticipatory bail in case of his arrest in connection with the FIR registered as C.R.No.131 of 2014 registered with Bhuj City 'A' Division Police Station, Kutch.

3. It is submitted by learned advocate Mr.Buch for the petitioner that the petitioner has purchased the land from original owner Dansukhbhai Limbani. It is submitted that Dansukh Limbani who was initially accused in this FIR has been protected by the Co-ordinate Bench in quashing petition and that protection is continued. It is submitted that during hearing of the quashing petition, the Co-ordinate Bench has called affidavit from Senior Officer of FSL. Mr. P.K.Vasava, Senior Officer of FSL has filed affidavit before the Co-ordinate Bench stating that signature of Dansukh Limbani on the power of attorney in favour of father of the

complainant is false and fabricated and not matching with natural signature. He would further submit that entire case of complainant is based on power of attorney whereby complainant claimed that on the basis of power of attorney of late Vasudev Thakkar, Dansukh Limbani sold disputed property to the complainant and later on said property was sold to the present petitioner through registered sale deed by original owner - Dansukh Limbani. In view of chequered history, no prima facie case is made against the petitioner of forging documents and presenting them as genuine before the Court. It is submitted that Civil Suit was moved by the complainant before the concerned Court in the year 2015 and also moved application seeking interim relief. However, the concerned Court has not believed the case of the complainant and declined to grant interim relief. The petitioner has filed counter claim in the said suit and also moved interim application in counter claim, whereby the Court has passed order of status quo in favour of the petitioner. It is submitted FIR is pending since the year 2014. It is submitted that police has decided to join the petitioner as accused in recent past. The investigation which has commenced in the year 2014, yet it is not culminated into charge-sheet. It is submitted that petitioner is permanent resident of Kutch and he is having movable and immovable property and therefore, there is no flight-risk. It is also submitted that petitioner is ready and willing to co-operate in investigation. It is also submitted that the petitioner is having deep root in the society, having no antecedent and therefore, it is submitted to grant anticipatory bail to the petitioner.

3. On the other hand, learned advocate Mr.A.A.Zabuwala for the complainant submitted that it is clear case where after pocketing the money, Dansukhbhai Limbani original owner sold the property to the petitioner. It is submitted that the petitioner was align with the main accused since beginning. It is submitted that the petitioner has participated in consolidation proceedings and even signed necessary panchnama and affidavit, so present petitioner was not shadow but kingpin in the offence. It is submitted that it is the petitioner who has given idea to Dansukh Limbani how to swindle already sold property. It is submitted that in these circumstances, the petitioner may not be granted anticipatory bail.

4. Learned APP appearing on behalf of the respondent-State has opposed grant of anticipatory bail looking to the nature and gravity of the offence. Learned APP after taken instruction from the IO who is present in the Court would submit that it is the case where the petitioner is involved in the offence and knitted entire offence and given idea to Dansukh Limbani how land which is already sold can be sold again. It is submitted that presence of the petitioner in the consolidation proceedings held that the petitioner is main basis of entire issue and since the petitioner is beneficiary of said transaction, he may not granted anticipatory bail.

5. Having heard the learned counsel for the parties and perusing the record of the case and taking into consideration the facts of the case, nature of allegations, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to exercise discretion in favour of the petitioner. I have

considered the following aspects.

(i) Civil suit is pending between the parties since 2015. Complainant failed to get interim relief in his favour but the petitioner.

(ii) Civil litigation has been cloak of criminality which can be prima facie envisioned.

(iii) Apart from above, affidavit of officer of FSL filed in quashing proceedings and placed on record of this proceedings indicate that power of attorney through which sale deed was executed in favour of the complainant contains the signature which does not match with natural signature of Dansukh Limbani.

(iv) Considering above aspects and also considering the aspect that entire evidence based on documentary evidence and most of them are lying with Investigating Officer and offence of the year 2014 is yet not completed, the petition deserves consideration.

(v) Learned advocate for the petitioner submits that the petitioner is ready and willing to abide any conditions which may be imposed by this Court.

6. Having heard the learned advocate for the parties and perusing the investigation papers, it is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon'ble Apex 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. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided.

7. This Court while exercising discretion in favour of the petitioner has taken into consideration law laid down by the Apex Court in the case of *Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors.* [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitutional Bench in the case of *Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab* (1980) 2 SCC 665. This Court has also taken into consideration law laid down in the case of *Sushila Agarwal v/s. State (NCT of Delhi)* [(2020) 5 SCC 1].

8. In the result, the present petition is allowed by directing that in the event of applicant herein being arrested pursuant to FIR registered as C.R.No.131 of 2014 registered with Bhuj City 'A' Division Police Station, Kutch, the petitioner shall be

released on bail on furnishing a personal bond of Rs. 10,000/- (Rupees Ten Thousand only) with one surety of like amount on the following conditions that the petitioner :

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

(b) shall remain present at concerned Police Station on 09.05.2024 and 10.05.2024 between 10.00 a.m. and 4.00 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 residence till the final disposal of the case till further orders;

(f) shall not leave India without the permission of the concerned trial court and if having passport shall deposit the same before the concerned trial court within a week;

9. If breach of any of the above conditions is committed by the petitioner, the concerned learned Judge will be free to take appropriate action in the matter. 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, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the petitioner on bail. Direct service is permitted.