

(2021) 03 GUJ CK 0061

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 2281 Of 2021

Rajeshbhai Ravjibhai Karkar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-03-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 120(B), 406, 420, 463, 465, 467, 468, 471

Citation : (2021) 03 GUJ CK 0061

Hon'ble Judges : Rajendra M. Sareen, J

Bench : Single Bench

Advocate : BM Mangukiya, Bela A Prajapati, Rr Marshall, Daifraz Havewalla, JK Shah

Final Decision : Dismissed

Judgement

Rajendra M. Sareen, J

1. RULE. Mr.J.K. Shah, learned APP waives service of notice of rule on behalf of the respondent State.

2. Present application has been preferred by the applicant - original accused under section 438 of the Code of Criminal Procedure for anticipatory bail in connection with the offence being C.R. No.11210015200088 of 2020 registered with DCB Police Station, Surat, District : Surat City for the offences punishable under sections 406, 420, 465, 467, 468, 471 and 120(B) of Indian Penal Code.

3. Heard Mr.B.M. Mangukiya, learned advocate for the applicant, Mr.J.K. Shah, learned APP for the State and Mr.R.R. Marshall, learned Senior Advocate appearing with Mr.Daifrez Havewalla, learned advocate for the complainant, through video-conference.

4. Mr.Mangukiya, learned advocate appearing for the applicant has submitted that the dispute between the parties is a civil dispute which has been wrongly converted in the criminal complaint. It is submitted that the power of attorney

which is alleged to have been forged, has been executed in the office of the Sub-registrar wherein the entire episode has been recorded in the videography. It is submitted that no officer from the office of the Sub-registrar is arraigned as accused. That signature on the power of attorney as well as all other documents are not denied by the complainant but the only allegation of the complainant in the FIR is that he was not made to understand the contents of the power of attorney or other documents. It is submitted that the offence is alleged to have been occurred between 07.07.2020 and 07.09.2020 but the FIR has been lodged on 10.10.2020 and thus, there is delay of more than one month in lodging the FIR. It is submitted that the power of attorney produced on record bears photograph and signature of the father of the complainant. Even the agreement-to-sell produced on record also bears signature of the father of the complainant and the son of the seller is the witness in the agreement-to-sell. It is submitted that other documentary evidence like Adhar Card of the father of the complainant, receipts of Rs.50 Lacs bear the signature of the father of the complainant. It is submitted that the entire transaction has taken place officially. The transaction of execution of power of attorney has been executed in the office of the sub-registrar and the same has been recorded in the videography and it was executed in favour of the present accused Rajeshbhai Ravjibhai Karkar. It is submitted that stamp duty of Rs.13,14,000/- has been paid on the power of attorney and the sale deed has also taken place officially and the complainant was the witness to the agreement-to-sell. As such, legal transaction of selling the land has taken place with legal consideration, which is paid to the seller and thereafter the present false FIR is filed stating fabricated facts in the FIR. It is further submitted that the alleged offence is triable by the learned Magistrate and the punishment is for three years only. It is submitted that the present is not a case of false documents as per section 463 of the Indian Penal Code. It is submitted that mere accusation of execution of a document by wrongful inducement is not an offence. It is submitted that the ingredients of the alleged offence are not made out. It is submitted that the applicant is innocent, hails from the reputed family, has roots in the society, has movable and immovable properties and would be available for interrogation and trial and undertakes to remain present before the investigating officer as and when required and undertakes to abide by the conditions those may be imposed upon the applicant by this Court while releasing the applicant on anticipatory bail.

Mr.Mangukiya, learned advocate for the applicant has relied on the decision of this Court in the case of Himmatlal Mohanlal Shah and another Versus State of Gujarat and another, reported in 2010(3) GLR 1905 in support of the contention that condition precedent for the offence under sections 467 and 471 is forgery and condition precedent for the offence of forgery is making a false document.

5. Present application is vehemently opposed by Mr.Marshall, learned Senior Advocate for the complainant as well as Mr.J.K. Shah, learned APP for the State. They have submitted that the investigation is going on. It is submitted that there is a prima facie case against the applicant. It is submitted that just to grab the

land of the complainant, conspiracy has been done and accordingly power of attorney, agreement-to-sell and affidavits are fabricated and the power of attorney and agreement-to-sell are yet to be recovered and therefore, custodial interrogation of the applicant is necessary. It is further contended that the signatures on the documents are not denied but the signatures are obtained by mischief. It is contended that the copies of the cheques are produced on record, but no original cheques have been given to the complainant. It is contended that investigation is yet to be done to find out the truth that who has paid the money for the stamp duty and who has made financial aid and the master behind the conspiracy is still to be found out. It is further contended that the bogus affidavit was also submitted to release the documents from the office of the Sub-registrar and for that also investigation is to be conducted. That the matter is relating to the offence under the Gujarat Land Grabbing Act, for which necessary proposal has been made. It is contended that all the accused named in the FIR are involved in the commission of the offence. The complainant has also filed a detailed reply. It is further contended that the illiterate person is tried to be duped and considering the seriousness and gravity of the offence, the application is required to be rejected.

6. Having heard the learned advocates appearing for the respective parties and considering the documents placed on record, it appears that accused Laljibhai Kanubha Radadiya is the beneficiary of the transaction and it was decided to sell the property to him, for a consideration of Rs.4,10,41,000/-, which is mentioned in the Kutcha Chithhi dated 18.07.2020 and as the earnest money Rs.5,00,000/- was also shown to be given. Thereafter one agreement-to-sell was also created in the name of accused Laljibhai Kanubhai Radadiya wherein nothing was mentioned about the kutcha chithhi and the tenure of the transaction was shown for 5 years and the consideration amount was shown as Rs.2,68,10,000/-. Thus, there is huge difference in the amount of sale consideration shown in the agreement-to-sell as well as kutcha chithhi. As regards the submission of the applicant regarding irrecoverable power of attorney which is produced on record, stamp paper of Rs.13,14,000/- used for the power of attorney which was executed in favour of present accused Rajesh Karkar and the videography recorded in the office of the sub-registrar are concerned, on perusal of the power of attorney, no amount of consideration which is paid to the complainant or the father of the complainant is mentioned, even no mode of the transaction is mentioned. It is pertinent to note that on the same day agreement-to-sell was also executed on the day when the power of attorney was executed, which creates doubt and supports the story of the prosecution regarding conspiracy prima facie. It is also relevant to note that the applicant has produced copies of five receipts each of Rs.5,00,000/-, but in the said receipts only date has been changed and the writing are of the same nature. It is also to be noted that in the agreement-to-sell, tenure for payment of the sale consideration is of 5 years but from the receipts, it is clear that Rs.2,50,00,000/- has been paid within 15 days. What was the haste when the tenure was 5 years to pay sale consideration of

huge amount of Rs.2,50,00,000/- within 15 days, when there is bar of payment of not more than Rs.2,00,000/- to be made within a day in cash. This aspect also crests doubt against the applicant. Copies of five cheques are produced on record, the same are issued in favour of the father of the complainant and this fact has been mentioned in the document dated 22.8.2020. From the reply of the complainant it appears that a notice in respect of selling of the land of the complainant was published on 21.08.2020 and as the complainant came to know, he published a reply to the notice on 27.08.2020 and it was specifically denied that no power of attorney has been given to anybody by the complainant or his father, nor any kind of dealing has been done pertaining to the disputed land, and though this reply has been published on 27.08.2020, the document has been registered on the very next date i.e. on 28.08.2020. From the copies of the cheques placed on record, it cannot be believed that the cheques have been given to the seller, when the seller has denied the entire transaction nor it can be believed to be in the custody of the complainant.

7. So far as the contentions of the applicant that the entire transaction of execution of power of attorney has been recorded in the videography in the office of the sub-registrar, wherein the father of the complainant has given specific answers and has specifically stated that he has assigned the power, which is not challenged by the complainant nor the sub-registrar has been made accused, are concerned, this Court is of the opinion that if the transaction of power of attorney is executed and recorded in videography in the office of the sub-registrar, why the execution of agreement-to-sell was not recorded in the office of the sub-registrar. Merely because the the transaction has been recorded in the videography in the office of the sub-registrar, it cannot be presumed that the entire transaction is legal transaction or nothing has been done fraudulently in the transaction. Anything opining about the recording of the transaction in the videography in the office of the sub- registrar at this stage will be appreciation of evidence, which cannot be done at this stage. Other aspects over and above the execution of the power of attorney are also to be seen. It is the case of the complainant that the owner of the land i.e. father of the complainant is illiterate and he was made to understand that everything was process for sanctioning the loan as per the discussion with one another accused - Sanny Madas and there is no reason not to believe the same. As stated above, in the Kacha Chithhi, amount of consideration is shown as Rs.4,10,41,000/- whereas in the agreement-to-sell, the amount of consideration shown is Rs.2,68,10,000/-. This discrepancy in the amount also creates suspicion about the conspiracy. It is also to be noted that copies of the cheques are produced on record by the applicant but no other cogent evidence of handing over the cheques has been produced on record, whereas Rs.11,00,000/- was paid to the father of the complainant through RTGS, then why the amount of cheques Rs.5,00,000/- each in all Rs.50,00,000/- has not been paid through RTGS. From the copies of the cheques, it cannot be said that the payment was made through cheques when the bank account of the father of the complainant was known to the accused side at the time of RTGS

payment. Further, agreement-to-sell has been executed in favour Laljibhai Kanubhai Radadiya, whereas the power of attorney holder - present applicant - Rajesh Karkar executed sale deed in favour of one co-accused Ashwin Pansheriya, that too with different amount of consideration. Thus, it is not appreciable how the buyer is changed. The said aspect also creates doubt about the conspiracy. It has also come on record that the purchaser of the property - Mr.Pansheriya was not having such a huge amount and in the last one year no transaction was made in his bank account. The payment of consideration made to the complainant or his father is not supported by any document. Further due to the less payment of stamp-duty, sub-registrar postponed the registration of the documents and called for the guidance with respect to the sale deed. This aspect also goes against the applicant. As regards conduct of accused - Mr.Rajesh Karkar is concerned, he is having criminal antecedent. He has been convicted in Criminal Case No.3224 of 2010 by the learned Additional Chief Judicial Magistrate, Bardoli for the offence under sections 420, 467, 468 and 120(B) of Indian Penal Code and sentenced him to undergo imprisonment of 7 years. Similar case is also registered against him in Katargam Police Station and same is pending for trial. It appears that accused - Mr.Karkar is having criminal antecedent and indulged in doing such kind of activities.

There is prima facie case against the applicant and this court is not inclined to grant him anticipatory bail in the case wherein conspiracy has been done to snatch away the possession of land of a person who is illiterate, and therefore, custodial interrogation of the accused is required to be done and it is necessary also.

8. In this connection, as this application has been preferred under the provisions of section 438 of the Cr.P.C. for grant of anticipatory bail, this court would like to refer the decision of the Hon'ble Supreme Court in the case of Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others, reported in (2011) 1 SCC 694, more particularly paras 14 & 112, which read as under :-

"14. It is clear from the Statement of Objects and Reasons that the purpose of incorporating Section 438 in the Cr.P.C. was to recognize the importance of personal liberty and freedom in a free and democratic country. When we carefully analyze this section, the wisdom of the legislature becomes quite evident and clear that the legislature was keen to ensure respect for the personal liberty and also pressed in service the age-old principle that an individual is presumed to be innocent till he is found guilty by the court.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made; the antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence; The

possibility of the applicant to flee from justice; The possibility of the accused's likelihood to repeat similar or the other offences. Whereas the accusation have been made only with the object to injuring or humiliating the applicant by arresting him or her. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case."

9. In this connection, while taking into consideration the ratio laid down by the Hon'ble Supreme Court in the case of Siddharam Satlingappa Mhetre (supra), this court has gone through the contents of the FIR, which is placed on record and has also considered the affidavit of the investigating officer. Upon going through the contents of the FIR, it appears that the name of the present applicant / accused is mentioned in the FIR.

10. So far as the decision in the case of Himmatlal Mohanlal Shah and another (supra) relied upon by Mr.Mangukiya, learned advocate for the applicant is concerned, the same is not applicable to the facts of the case on hand.

11. Considering the overall facts and circumstances of the case, this court is not inclined to exercise discretion and release the applicant on anticipatory bail. The application deserves to be rejected and is hereby rejected. Rule is discharged.