

(2022) 05 GUJ CK 0046

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 6754 Of 2022

??Shaileshgiri Mohangiri Meghnathi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 12-05-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 70, 437(1), 439, 439(1)
Indian Penal Code, 1860 — Section 406, 420, 465, 467, 471, 511
Prevention Of Money Laundering Act, 2002 — Section 5, 33, 34

Citation : (2022) 05 GUJ CK 0046

Hon'ble Judges : Niral R. Mehta, J

Bench : Single Bench

Advocate : AJ Yagnik, Dipal R Ravaiya, JK Shah

Final Decision : ?Dismissed

Judgement

Niral R. Mehta, J

1. Heard Mr.A.J. Yagnik, learned counsel for the applicant, Mr.J.K.Shah, learned Additional Public Prosecutor for the respondent – State and Mr.Nirad Buch, learned counsel with Mr.Dipal R. Ravaiya, learned counsel for the original complainant.

2. By way of the present application filed under Section 439 of the Code of Criminal Procedure, 1973, the applicant-accused has prayed for bail in connection with the FIR being I-C.R.No.77 of 2018 registered with Junagadh "C" Division Police Station, District – Junagadh for offences punishable under 406, 420, 120-B, 506(2) and 34 of the IPC.

3. As per the FIR, in sum and substance, the complainant intending to purchase the land bearing Survey No.141 Paiki, Plot No.36 admeasuring 699 sq.mtrs. and Plot No.33 admeasuring 519 sq.mtrs. running in the name of Varshaben Shaileshgiri Meghnathi and Jalpa Jayeshbhai Goswami. That Shaileshgiri Mohangiri Meghnathi – the applicant herein is a power of attorney holder of the

said land. The complainant through one Harsukhbhai Tita met the present applicant on 11.4.2018 and agreed to purchase the said land for total consideration of Rs.2,44,00,000/- plus conveyance expenditure. On that day, as a token amount, Rs.40 lakhs was agreed to be paid, out of which Rs.5 lakhs was paid to the present applicant and Rs.35 lakhs was paid to Harsukhbhai Tita upon insistence of the applicant. The term for payment was fixed as 9 months. The sale deed was decided to be executed at Rs.87 lakhs as per the wish of the present applicant. After about 3 months, when the applicant was asked to execute the sale deed, at that time, the applicant had insisted the complainant to pay Rs.40 lakhs to Harsukhbhai Tita for settlement arrived at between the applicant herein and Harsukhbhai Tita, for which Harsukhbhai Tita had initiated FIR in the year 2006 which was to be withdrawn by him upon receipt of the said amount. Accordingly, the complainant paid Rs.40 lakhs to Harsukhbhai Tita, for which the applicant herein in his own hand-writing given the receipt. Thereafter, on 18.8.2018, Rs.6 lakhs in cash was paid to the present applicant for the purpose of conveyance expenditure. On 21.8.2018, the applicant asked Rs.77 lakhs in cash to be sent at his residence and further asked to pay Rs.58 lakhs by way of RTGS and to give a cheque of Rs.29 lakhs which he shall deposited after execution of the sale deed. Accordingly, on 27.8.2018, first RTGS of Rs.29 lakhs made in account of Nishant Meghnathi and second RTGS of Rs.29 lakhs was made in the joint account of the present applicant and his wife and 3rd cheque of Rs.29 lakhs was given to the applicant. On 28.8.2018, as desired by the applicant, the complainant paid Rs.77 lakhs in cash at his residence. Thus, the applicant after having received Rs.77 lakhs in cash and having confirmed two RTGS, went along with the complainant to the office of the Registrar. However, the Sub-Registrar asked to modify the sale deed. Thus, the applicant along with son of the complainant went for modification of the said sale deed and at that time, the applicant had transferred Rs.30 lakhs cash to his brother Nishant at Ahmedabad by way of Angadiya. Thereafter, while going back to Sub-Registrar's office, the applicant somehow managed to escape and did not come to the Sub-Registrar for execution of the sale deed. Thus, the present complaint came to be lodged.

4. It appears that after lodgment of the FIR in the year 2018, the applicant remained absconder till his arrest on 6.12.2021 i.e. almost for a period of 3 years. Therefore, the warrant under Section 70 of Cr.P.C. was also issued.

5. The Investigating Agency thereafter filed charge-sheet against the present applicant. The applicant, therefore, approached the Sessions Court by way of Criminal Misc. Application No.112 of 2022. However, the District & Sessions Judge, Junagadh vide order dated 10.3.2022 rejected the said bail application.

6. Being aggrieved by the aforesaid, the applicant is before this Court by way of present application for bail under Section 439 of the Cr.P.C.

7. Mr.A.J. Yagnik, learned counsel appearing for the applicant has mainly submitted as under :

(a) The applicant has not committed any offence and the entire matter is governed by civil law, since the dispute involved is arising out of land transaction which is civil in nature.

(b) The role of the present applicant is also not much serious in nature as he was acting merely as a power of attorney holder of the original owner of the suit property.

(c) The genuity of the documents and validity thereof is seriously doubted because the family members of the applicant has not signed any document as relied upon and those documents are forged and fabricated at the instance of the complainant.

(d) The ingredients of Section 406 of the IPC are absent and thereby, no offence is said to have been committed by the present applicant.

(e) The entire issue revolves around non-execution of the sale deed, for which the suit is also pending before the court below and thereby, present FIR is nothing but an abuse of process of law and filed with a view to pressurize the applicant for the purpose of execution of sale and thereby, Mr.Yagnik urged this Court to grant regular bail to the present applicant.

(f) The ingredients of Section 420 of IPC cannot be attributed to the present applicant and, thereby entire FIR is a tool used for arm twisting and thereby, the present applicant deserves to be enlarged on bail.

(g) The last but the main contention advanced by Mr.Yagnik is that the applicant is a practicing advocate and thereby, he is innocent and has nothing to do with offences as alleged in the FIR.

7.1 By making above submissions, Mr.Yagnik urged this Court to grant the regular bail to the applicant on any suitable conditions in the facts and circumstances of the present case.

8. Mr.J.K.Shah, learned Additional Public Prosecutor, opposed the present application by making following submissions :

(1) That the FIR was lodged in 2018. However, the applicant being lawyer having legal knowledge, somehow he could managed and avoided his arrest for a period of 3 years. The applicant was an absconder for a period of approximately 3 years and against whom, even the warrant under Section 70 of Cr.P.C. was issued and, therefore, Mr.Shah urged this Court not to grant any indulgence to the present applicant.

(2) Mr.Shah heavily relied upon the Panchnama of CCTV footage of Angadiya shop from which the applicant alleged to have transferred a sum of Rs.30 lakhs in cash. Mr.Shah relying upon said Panchnama stated that the allegations made in the FIR that the applicant accused has transferred Rs.30 lakhs in cash to his brother Nishant at Ahmedabad, gets corroboration and thereby, prima facie, the allegations stand substantiated.

(3) Mr.Shah further relied upon the statement of Hansaben Ramnikbhai Dekiyawaliya dated 7.9.2018, who was at the relevant point of time Sub-Registrar and in whose presence, some deliberations took place between the complainant and the accused and thereafter, accused - applicant and the complainant went away for modification of the sale deed document and then, present applicant never returned. Mr.Shah further submitted that in the statement, said Hansaben Dekiyawaliya confirmed that present applicant was carrying suitcase. Mr.Shah, thus, submitted that the statement of the Sub-Registrar also fortifies the allegations made in the FIR against the present applicant.

(4) Mr.Shah further relied upon the statement of Devan Kishorbhai Pandya dated 11.9.2018, who was called before the Sub-Registrar office by the complainant and further, he confirmed the fact that the applicant was also present before the office of Sub-Registrar and thereafter, went for modification of the sale deed document as per the direction of Sub-Registrar Hansaben and never returned back for execution of the sale deed and successfully escaped. Mr.Shah submitted that the present witness is, in a way, an independent witness and thereby, at this stage, there is no reason to ignore and/or disbelieve the version of his statement.

(5) Mr.Shah further relied upon the statement of Bharatkumar Shankarlal Thakker, who is running Angadiya Pedhi at Ahmedabad. Said witness has categorically stated that upon instructions from R.C. Angadiya, Junagadh, Rs.30 lakhs cash was paid to Nishant Meghnathi. Mr.Shah further relied upon the statement of Tarun Natwar Kakkad dated 7.9.2018 who is also running Angadiya Pedhi in the name of R.C. Enterprise, who has stated that on instructions from the present applicant, he has directed his branch at Ahmedabad to pay Rs.30 lakhs to Nishant Meghnathi. Relying upon these two statements of Angadiya Pedhi of Junagadh and Ahmedabad, Mr.Shah submitted that allegations in the FIR about applicant having transferred Rs.30 lakhs to his brother Nishant at Ahmedabad gets full-fledged corroboration and thereby, at this stage, said statements of Angadiya Pedhi of Junagadh and Ahmedabad, who are independent witnesses, cannot be ignored. Mr.Shah, therefore, submitted that the applicant has received cash amount as alleged in the FIR and in turn, also transferred to his brother at Ahmedabad. Mr.Shah, therefore, submitted that having received the amount and thereafter, no executing the sale deed, would certainly fall within the scope and ambit of Sections 406 and 420 of IPC and thereby, the present applicant may not be enlarged on regular bail.

(6) Mr.Shah further relied upon the RTGS entry of Rs.58 lakhs as well as receipt issued by the applicant for cash, which, according to Mr.Shah, fortified the fact that the applicant has received huge amount in cash and in cheque against the land in question and thereafter, not executed the sale deed and thereby, it amounts to clear case of criminal breach as well as cheating.

(7) Mr.Shah also heavily relied upon the statement of Harsukhbhai Tita dated 6.9.2018, wherein the character and conduct of the present applicant is narrated

in detail and considering the statement, the allegation made in the FIR is thoroughly substantiated and gets full corroboration. Thus, at this stage, prima facie case is made out against the present applicant and thereby, the applicant does not deserve to be enlarged on regular bail.

8.1 By making above submissions, Mr.Shah urged this Court not to exercise discretion in favour of present applicant.

9. Mr.Nirad Buch, learned counsel for Mr.Dipal Ravaiya, learned counsel appearing for the original complainant also opposed this bail application with all vehemence. Mr.Buch submitted that the present applicant being a lawyer is misusing his legal knowledge and not acting befitting to the standard of lawyer. Mr.Buch submitted that the present applicant is habitual offender. Mr.Buch further submitted that in past, as many as 5 FIRs are registered against the present applicant. The details thereof are as under :

“(1) I-C.R.No.132 of 2006 under Sections 406, 465, 467, 471 of IPC dated 19.5.2006.

(2) I-C.R.No.140 of 2006 under Sections 406, 465, 467, 384 and 511 of IPC and Sections 5, 33 and 34 of the Prevention of Money Laundering Act dated 26.5.2006.

(3) I-C.R.No.148 of 2006 under Sections 406, 465, 467, 384 and 511 of IPC and Sections 5, 33 and 34 of the Prevention of Money Laundering Act dated 10.6.2006.

(4) I-C.R.No.199 of 2006 under Sections 406, 465, 467, 384 and 511 of IPC and Sections 5, 33 and 34 of the Prevention of Money Laundering Act dated 14.8.2006.

(5) I-C.R.No.203 of 2006 under Sections 406, 465, 467, 384 and 511 of IPC and Sections 5, 33 and

34 of the Prevention of Money Laundering Act dated 21.8.2006.”

9.1 However, some of the FIRs said to have been settled and some are still pending against the present applicant, but the fact remains that present applicant is in habit of indulging in offence like present one.

9.2 Mr.Buch further submitted that the applicant was declared as absconder and warrant under Section 70 of the Cr.P.C. was issued as since more than 3 years, the applicant was avoiding his arrest and thereby, if the applicant is enlarged on bail, in that case there are all chances that he will tamper and/or hamper with the witnesses and would try to win over them.

9.3 Mr.Buch further submitted that the present applicant being a lawyer, has designed preplanned conspiracy and obtained the trust of the complainant and thereby, obtained huge amount towards the land in question. Learned counsel also submitted that present accused has played major and active role and the

applicant is the master mind of entire conspiracy. Mr.Buch pointed out that initially, the very applicant has preferred quashing petition before this Court, however, same was withdrawn as this Court was not inclined to entertain the present application, having prima opinion that the case against the applicant is made out and thereby, Mr.Buch requested this Court not to exercise any discretion in favour of present applicant.

9.4 Over and above, Mr.Buch adopted all the arguments canvassed by Mr.Shah, learned APP and requested this Court not to grant any indulgence and/or use any discretion in favour of present applicant.

10. I have heard the learned counsel appearing for the respective parties and have also gone through the papers of investigation at length. No other and further submissions have been canvassed by learned counsel appearing for the respective parties, except what are stated herein-above.

11. Having considered the submissions canvassed by learned counsel appearing for the respective parties and having perused the investigation papers, a short question that falls for consideration of this Court is whether in the facts and circumstances of the case, the applicant, a lawyer by profession and a habitual offender, is entitled for regular bail ?

12. So as to decide the aforesaid question, it would be apt to refer to and rely upon the judgment of the Apex Court in the case of Kamla Devi v. State of Rajasthan & Anr., reported in 2022 SCC Online 307. In the said decision, the Apex Court has in Para.25 discussed the factors to be considered by the Court while granting the bail which reads, thus;

"25. This Court has, on several occasions has discussed the factors to be considered by a Court while deciding a bail application. The primary considerations which must be placed at balance while deciding the grant of bail are: (i) the seriousness of the offence; (ii) the likelihood of the accused fleeing from justice; (iii) the impact of release of the accused on the prosecution witnesses; (iv) likelihood of the accused tampering with evidence. While such list is not exhaustive, it may be stated that if a Court takes into account such factors in deciding a bail application, it could be concluded that the decision has resulted from a judicious exercise of its discretion, vide Gudikanti Narasimhulu & Ors. vs. Public Prosecutor, High Court of Andhra Pradesh [(1978) 1 SCC 240] ; Prahlad Singh Bhati vs. NCT of Delhi & Ors. [(2001) 4 SCC 280 ; Anil Kumar Yadav vs. State (NCT of Delhi) [(2018) 12 SCC 129]."

13. In another decision in the case of Y v. State of Rajasthan & Anr., reported in 2022 SCC Online 458, the Apex Court has in Para.8 and 9 observed as under :

"8. This Court has, in a catena of judgments, outlined the considerations on the basis of which discretion under Section 439, CrPC has to be exercised while granting bail. In Gurcharan Singh v. State (Delhi Administration), (1978) 1 SCC 118 this Court has held as to the various parameters which must be considered

while granting bail. This Court held as follows:

24. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.

9. The above factors do not constitute an exhaustive list. The grant of bail requires the consideration of various factors which ultimately depends upon the specific facts and circumstances of the case before the Court. There is no strait jacket formula which can ever be prescribed as to what the relevant factors could be. However, certain important factors that are always considered, inter-alia, relate to prima facie involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused [see *State of U.P. v. Amarmani Tripathi*, (2005) 8 SCC 21].”

14. Yet in another decision in the case of *Jagjeet Singh & Others v. Ashish Mishra alias Monu & Anr.*, reported in 2022 SCC Online 453, the Apex Court has held in Para.30 as under :

“30. It will be beneficial at this stage to recapitulate the principles that a Court must bear in mind while deciding an application for grant of bail. This Court in the case of *Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr.*, (2010) 14 SCC 496 after taking into account several precedents, elucidated the following:

9. 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.

(Emphasis Supplied)”

15. Keeping in mind the aforesaid legal enunciation, the salient facts emanating from the investigation papers, can be stated as under :

(i) This is a case in which a legal brain i.e. the applicant being an Advocate involved as the main accused.

(ii) It appears that the applicant being an Advocate well-versed with the nitty-gritty of the legal provisions and the procedure and thereby, appears to have evaded his arrest for almost 3 years.

(iii) The accused successfully remained absconder for almost 3 years, for which a warrant under Section 70 of the Cr.P.C. was to be issued.

(iv) From the investigation papers, prima facie, it is established that the accused had promised and/or agreed to sell the land in question to the complainant for an amount of Rs.2,44,00,000/-, out of which Rs.58 lakhs came to be received in two accounts i.e. (i) his son's account and (ii) in the joint account of applicant and his wife. Over and above that, the amount in cash also seems to have been received, for which various statements of independent witnesses are also there on record along with documentary evidence of cash receipt by the applicant.

(v) Admittedly, the sale transaction was for the purpose of the land in question, however, till today, no sale deed came to be executed.

(vi) Another important witness i.e. Hansaben Ramniklal Dekiwaliya , who is the Sub-Registrar and whose statement also confirms that the complainant and the accused had come to Sub-Registrar's office for the purpose of execution of sale deed and thereafter, because of some modification in the sale deed, they went outside the Registrar's office and thereafter, the applicant never returned. The said statement fortifies the fact that the applicant was to execute the sale deed, for which he had received the amount by way of cheque as well as in cash.

(vii) It also transpires that the present applicant has as many as 6 FIRs lodged for more or less similar offences. It is stated that many of those FIRs are settled and/or quashed. Be that as it may, the fact remains that the applicant has tainted history.

16. In view of the aforesaid facts and circumstances, at the outset, it requires to be noted that the present applicant being a lawyer by profession, is oftenly involved in the offence serious in nature which itself is a matter of shame. The profession of a lawyer is a noble profession, as it has direct nexus with pious stream of justice which at any cost shall not be allowed to be polluted. It is highly unexpected from a lawyer to have indulged in such an offence not once,

but several times in past. Though some offences are settled, but the fact remains that the offences took place at the instance of the applicant. Thus, the conduct of the applicant seems to be not befitting to the standard of the profession. Admittedly, in the present case, as stated herein-above, the applicant has received the amount in cash as well as by cheque towards the consideration of sale of land and despite receiving huge amount, the applicant has not executed the sale deed and eloped for a period of almost 3 years. In my opinion, prima facie, offences under Sections 406 and 420 of the IPC are made out against the applicant.

17. Keeping in mind the observations of the Apex Court in the case of Kamla Devi (Supra), wherein the Apex Court has discussed the factors to be considered by a Court while deciding the bail application. In my view, the seriousness of offence is made out because the applicant is a lawyer by profession; the likelihood of accused fleeing from justice is also apprehendable as the applicant was absconder for almost 3 years for which warrant under Section 70 of the Cr.P.C. was to be issued; chances of influencing the witnesses are also bright considering the position and status of the applicant as a lawyer. Even the past of the applicant suggests that majority FIRs filed against the present applicant got settled and then, quashed. Therefore, there is justifiable apprehension that if the applicant is released on bail, the applicant will influence and/or win over the witnesses.

18. In view of the aforesaid discussion, in my considered opinion, the present application is bereft of any merits and the applicant does not deserve any sympathy as he being a lawyer repeatedly indulging into criminal activities and thereby, is not entitled to be released on bail. I answer the question accordingly.

19. For the foregoing reasons, present application is not entertained and is hereby rejected. Rule is discharged.