

HIGH COURT OF GUJARAT**Coram: Honorable Mr. Justice J. C. Doshi****Date of Decision: 07/03/2024**

R/CRIMINAL APPEAL (FOR ANTICIPATORY BAIL) NO. 511 of 2024 With
R/CRIMINAL APPEAL NO. 377 of 2024

VAGHELA ANILKUMAR @ BABUBHAI ARJANBHAI**Versus****STATE OF GUJARAT & ANR.****Legislation:**

Section 14 A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Section 438 of the Code of Criminal Procedure, 1973.

Subject: Anticipatory bail application in a case involving alleged land grabbing and misuse of power of attorney under the guise of a sham transaction.

Headnotes:

Criminal Law – Anticipatory Bail – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – The Gujarat High Court considered the applications for anticipatory bail under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, in connection with FIR No. 11192050240041 at Sanand Police Station, Ahmedabad (Rural). The appellants sought relief against their potential arrest related to a land transaction dispute alleged to be a civil matter. [Para 1-2]

Arguments by Appellants – Civil Nature of Dispute – The appellants contended that the dispute was purely civil, involving a transaction under an agreement to sell, coupled with an irrevocable power of attorney. They

argued that the FIR was falsely lodged to cover up the first informant's refusal to execute the sale deed. The appellants expressed willingness to cooperate in the investigation. [Para 2]

Arguments by Complainant and State – Criminal Nature of Dispute – Custodial Interrogation Needed – The complainant and State argued that the appellants, under the guise of a sale agreement, committed a fraudulent transaction and misused their power of attorney, necessitating custodial interrogation. The State highlighted the appellants' criminal antecedents, indicating their involvement in similar offences and asserting that bail would send a negative message to society. [Para 3-4]

Court's Analysis – Applicability of Bail Criteria – The Court, applying the principles laid down in *Bhadresh Bipinbhai Sheth Vs. State of Gujarat*, evaluated the nature of the accusation, the role of the accused, their antecedents, potential risk of flight, and likelihood of repeating the offence. The Court found that while one antecedent was registered against each appellant, the facts of the case and the nature of the allegations favored the exercise of discretion in granting bail. [Para 5-6]

Decision – Grant of Anticipatory Bail – Considering the parameters of bail, nature of allegations, severity of punishment, absence of flight risk, and precedents set by higher courts, the Court granted anticipatory bail to the appellants. They were ordered to be released on bail upon arrest, subject to several conditions including cooperation with the investigation, non-interference with evidence, restriction on travel, and maintaining a specific residence. [Para 7-9]

Referred Cases:

- *Bhadresh Bipinbhai Sheth Vs. State of Gujarat* reported in AIR 2015 SC 3090.
- *Prithviraj Chauhan vs Union of India*, reported in (2020) 4 SCC 727.
- *Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors.*, reported in (2011) 1 SCC 6941.
- *Shri Gurubaksh Singh Sibbia & Ors.*, reported in (1980) 2 SCC 665.

- Sushila Aggarwal v. State (NCT of Delhi), reported in (2020) 5 SCC 1.

Representing Advocates:

For Appellant(s) in Appeal No. 511 of 2024: A S Timbalia.

For Opponent(s)/Respondent(s) No. 2 in Appeal No. 511 of 2024: Mr Akshay V Matani, Mr. Arsh. A. Bafna.

For Opponent(s)/Respondent(s) No. 1 in both appeals: Mr HK Patel, APP.

For Appellant(s) in Appeal No. 377 of 2024: Mr Nitin Gandhi, Mr Rohankumar Amin.

ORAL ORDER

Heard learned advocate Mr. Timbalia and learned advocate Mr.Amin for the appellants, learned advocate Mr.Akshay Matani for the complainant and learned APP for the respondent - State.

1. The present appeals are filed under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act") read with Section 438 of the Code of Criminal Procedure, 1973, the appellants accused has prayed to release them on anticipatory bail in the event of their arrest in connection with the FIR being C.R. No.11192050240041 of 2024 with Sanand Police Station, Ahmedabad (Rural).
2. Learned advocate for the appellants submits that it is civil transaction and agreement to sell was executed, the accused was coupled with irrecoverable power of attorney. The first informant was not intending to execute sale deed and therefore, to camouflage aspect, he has filed present false FIR. It is submitted that even otherwise entire issue pertains to civil dispute between the parties. The dispute is subservient to documentary evidence. The appellants are ready and willing to cooperate in investigation and they are living in Ahmedabad district and therefore, the appellants may be granted anticipatory bail.

3. On the other hand, learned advocate for the complainant submitted that in view of clause 3 of the agreement to sell, on repayment of Rs.27,50,000/- being sale consideration, the appellants were required to cancel agreement to sale but instead of doing so, even after receipt of Rs.27,50,000/- being sale consideration, the appellants by misusing irrevocable power of attorney executed sale deed in their favour. So sham transaction took place between the parties. The appellants are indulging in grabbing land of the complainant under pretext of executing agreement to sale. Therefore, custodial interrogation of the appellants is necessary. It is submitted that it is clear case of money lending and higher amount of interest has been charged and charging interest is continued. Therefore, the appellants may not be granted anticipatory bail. If appellants are granted bail, it will send wrong signal to the society.
4. Learned APP for the respondent State adopting argument of learned advocate for the complainant submitted that accused - Anilkumar has one antecedent under provisions of IPC and Arms Act and he is involved in identical kind of offence. It is submitted that so far as accused Rakesh is concerned, one offence under section 306 of IPC is registered against him as boy had committed suicide as he had lost Rs.4 lakhs in cricket betting and accused was pressurizing him. Under typical modus operandi by lending the money, the appellants are trying to grab land of innocent person and the complainant. Therefore, it is submitted that considering the nature of allegations, role attributed to the appellants, the appellants may not be granted bail.
5. Having heard the learned counsel for the parties and considering the FIR on record along with antecedent of the accused, what appears that accused Anilkumar played role of middleman, whereas, accused Rakesh got executed agreement to sale of the particular land. It is the case of the first informant that he has paid back sale consideration stated in the agreement to sale. Accused Rakesh has not cancelled or revoked agreement to sale. These all issues can be examined before the learned Civil Court in appropriate proceedings. So far as bail jurisdiction is concerned, this Court is stuck with the following parameters stated in *Bhadresh Bipinbhai Sheth Vs. State of Gujarat* reported in AIR 2015 SC 3090 :

“(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

- (b) The antecedents of the applicant including the factas to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
 - (c) The possibility of the applicant to flee from justice;
 - (d) The possibility of the accused's likelihood to repeat similar or other offences;
 - (e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
 - (f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
 - (g) 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. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;
 - (h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;
 - (i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
 - (j) 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 in entitled to an order of bail.”
6. Indeed, one antecedent is registered against both the appellants, but 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 appellants.

7. In above consideration, the appellants has made out prima facie case to get the anticipatory bail. This Court is conscious that statutory bar is operating while granting anticipatory bail under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. But looking to the above reasons along with prima facie case, nature and gravity of the accusation and severity of the punishment as well as absence of flight-risk character, behaviour, means and position of the accused as well as non-likelihood of the offence being repeated and taking assistance of the judgment of the Hon'ble Apex Court in the case of Prithviraj Chauhan vs Union of India, reported in (2020) 4 SCC 727, this is a fit case to exercise jurisdiction.
8. Considering the aforesaid aspects and the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors. reported in (2011) 1 SCC 6941, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of Shri Gurubaksh Singh Sibbia & Ors. reported in (1980) 2 SCC 665 and also the decision in the case of Sushila Aggarwal v. State (NCT of Delhi) reported in (2020) 5 SCC 1, I am inclined to allow the present appeal.
9. In the result, the present appeals are allowed by directing that in the event of appellants herein being arrested in connection with the FIR being FIR being C.R. No.11192050240041 of 2024 with Sanand Police Station, Ahmedabad (Rural), the appellants shall be released on bail on furnishing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) each with one surety of like amount on the following conditions that they:
 - (a) shall cooperate with the investigation and makethemselves available for interrogation whenever required;
 - (b) shall remain present at the concerned Police Station on 26.03.2024 and 27.03.2024 between 11.00 a.m. and 2.00 p.m. and the IO shall ensure that no unnecessary harassment or inconvenience is caused to the appellant;
 - (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 his residence till the final disposal of the case till further orders;
 - (f) shall not leave India without the permission of the Court and if having passport shall deposit the same before the Trial Court within a week; and
 - (g) shall not enter Ahmedabad, Surendranagar and Morbi District for one year, except for the purpose of attending Court proceedings and marking presence before the concerned police station.
10. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the appellant on bail. It is needless to say, the observations made hereinabove are only tentative in nature and the trial Court shall not be influenced by the aforesaid observation. Direct service is permitted.

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