



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 10007
of 2024**

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NARENDRA DHIRAJLAL GOHIL
Versus
STATE OF GUJARAT

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Appearance:

MR HRIDAY BUCH, ADVOCATE WITH
MR. AKASH R PATEL(6715) for the Applicant(s) No. 1
MS JIRGA JHAVERI, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY

Date : 18/06/2024

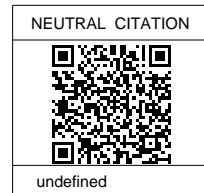
ORAL ORDER

1. **RULE.** Learned APP waives service of rule for the respondent-State.

2. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant-accused has prayed for enlarging the applicant on anticipatory bail in connection with the FIR being **C.R. No. 11191008240383 of 2024** registered with **Chandkheda Police Station, Ahmedabad.**

3. Heard learned advocate for the applicant and learned APP for the respondent - State.

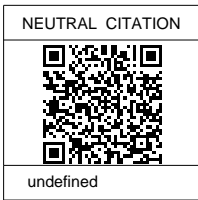
4. Learned advocate for the applicant has submitted that the applicant is apprehending arrest in connection the aforesaid FIR and in this connection the earlier application filed by the applicant before the learned Sessions Court came to be disallowed.



5. Learned Additional Public Prosecutor appearing on behalf of the respondent – State has opposed grant of anticipatory bail, inter alia, contending that the present applicant had agreed to sell two flats in the scheme in question to the first informant and the entire amount of consideration had been paid by the first informant to the present applicant, however, despite the same, the applicant did not execute any sale-deed in favour of the first informant and had subsequently sold one of the flats in favour of third party in the Year 2018. Thus, the present applicant has played an active role in commission of offence in question. She further submits that the investigation is at very initial stage. She, therefore, submitted to dismiss the present application.

6. Learned advocate appearing for the original complainant has opposed the present application, inter alia, contending that the present applicant had paid the amount of Rs.36,80,000/- in the account of present applicant and pursuant to the same, two flats had been allotted in favour of the first informant in the Year 2012. However, since thereafter, no sale-deed was executed by the present applicant in favour of the first informant. Several communications had taken place between the parties for the same and despite the same, the present applicant had sold one of the flats to the third party in the Year – 2018. Thus, there is an active participation on the part of present applicant in commission of offence in question. He, therefore, submitted to dismiss the present application.

7. Learned advocate Mr.Nisarg Trivedi is permitted to file



his appearance as well as affidavit on behalf of first informant before the Registry of this Court.

8. Heard learned Advocates for the parties and perused the material available on record. As per the case of prosecution, the present applicant had agreed to sell 2 flats in the scheme in question to the first informant and allegedly had accepted the amount of Rs.36,80,000/- from the first informant for the said purpose. However, the applicant had not executed any sale-deed for the same in favour of the first informant and in the Year 2018 had sold one of flats to the third party. This Court has considered the nature of the dispute so also, the fact that the first informant had not initiated any civil action for the dispute in question.

9. This Court has considered following aspects,

(a) as per catena of decisions of Hon'ble Supreme Court there are mainly two factors which are required to be considered by this court;

- (i) prima facie case
- (ii) requirement of accused for custodial interrogation.

Therefore, in the facts and circumstances of the present case, this court is inclined to consider the case of the applicant.

10. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors.**, reported at [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of **Shri Gurubaksh Singh Sibbia & Ors. Vs. State of**

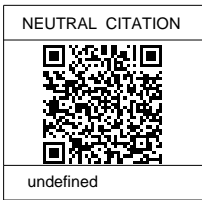


Punjab, reported at **(1980) 2 SCC 565**. Further, this Court has also taken into consideration the ratio laid down in the case of **Sushila Aggarwal and Ors. v. State (NCT of Delhi) and Anr. in Special Leave Petition No. 7281-7282/2017 dated 29.01.2020**.

10.1 This court has also considered the judgment in the case of **Arnesh Kumar v. State of Bihar** reported in **(2014) 8 SCC 273**, wherein the Hon'ble Apex Court has observe that whenever there is punishment of 7 years, then the court would be liberal to exercise the discretion. Further, by exercising the discretion under Section 438 Cr.P.C, the doors of remand by the Investigating Officer is open and therefore also this court is inclined to exercise powers under Section 438 of Cr.P.C.

11. In the result, the present application is allowed. The applicant is ordered to be released on anticipatory bail in the event of arrest in connection with a FIR being No. **C.R. No. 11191008240383 of 2024** registered with **Chandkheda Police Station, Ahmedabad** on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of like amount on the following conditions;

- (a) shall cooperate with the investigation and make available for interrogation whenever required;
- (b) shall remain present at concerned Police Station on **25.06.2024** between 12.00 Noon and 2.00 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; and

12. At the trial, the concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.

13. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(M. R. MENGDEY,J)

GIRISH