

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 67 of
2024**

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DINESHBHAI RAMANBHAI PATEL & ANR.
Versus
STATE OF GUJARAT

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Appearance:

MR MANISH J PATEL(2131) for the Applicant(s) No. 1,2
MR.AMIT R JOSHI(6682) for the Respondent(s) No. 1
MR HK PATEL, APP for the Respondent(s) No. 1

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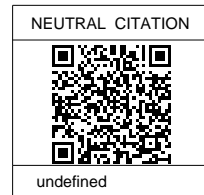
CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 08/05/2024

ORAL ORDER

1. By way of the present petition under Section 438 of the Code of Criminal Procedure, 1973, the petitioners have prayed to release them on anticipatory bail in case of their arrest in connection with the FIR registered as C.R.No.11188004230721 of 2023 registered with Dhansura Police Station, District - Aravalli.

2. Learned advocate for the petitioners submits that the petitioners are innocent. There was no intention of cheating. It is submitted that for the alleged offence against the petitioners maximum punishment is of 7 years. It is submitted that the petitioners are ready and willing to deposit Rs.20 lakhs which is claimed by the complainant as value of the suit before the learned Trial Court. It is submitted that after filing of FIR, complainant has also filed suit for specific performance and cancellation of sale deed. It is submitted that civil litigation is

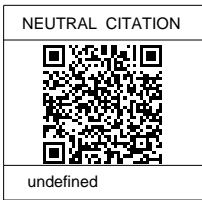


going on between the parties and it has been given color of criminality. It is submitted that the petitioners are readily available in investigation and they have movable and immovable property in District Aravalli and therefore, there is no flight-risk. Therefore, it is submitted to grant anticipatory bail to the petitioners.

3. On the other hand, learned advocate for the complainant submitted that after pocketing Rs.45 lakhs, the petitioners who executed agreement to sale in favour of the complainant, sold the property to third party which indicates that there is offence of cheating and forgery. Therefore, prima facie offence is made out against the petitioners and the petitioners may not be granted anticipatory bail.

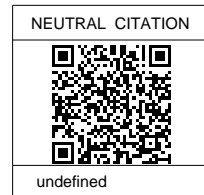
4. Learned APP appearing for the respondent - State joining argument of learned advocate for the complainant submitted that huge amount has been pocketed by the petitioner under the pretext of executing agreement to sale and then sold the property to third party, which prima facie establish dishonest intention on the part of the petitioners and therefore, it is submitted that the petitioners may not be 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 petitioners. I have considered the following aspects.



- (i) Offence under section 406 and 420 of IPC, maximum punishment which can entail on successful conviction is of 7 years.
- (ii) The dispute is relating to documentary evidence and they are lying with Investigating Officer.
- (iii) Reading FIR indicates that civil dispute exists between the parties.
- (iv) Alleged offence are triable by learned JMFC.
- (v) The petitioners are ready and willing to deposit Rs.20 lakhs which is value of the suit of the complainant. It will be open for the petitioners to move appropriate application before the concerned Trial Court in civil suit for depositing the amount of Rs.20 lakhs.
- (vi) No antecedent are recorded against the petitioners.

6. 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)

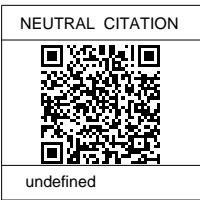


reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be 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 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 applicants herein being arrested pursuant to FIR registered as **C.R.No.11188004230721 of 2023 registered with Dhansura Police Station, District - Aravalli,** the petitioners 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 the petitioners :

- (a) shall cooperate with the investigation and make themselves available for interrogation whenever required;
- (b) shall remain present at concerned Police Station on **17.05.2024 and 18.05.2024** 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.

SATISH

(J. C. DOSHI,J)