

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 7876
of 2024****With****R/CRIMINAL MISC.APPLICATION NO. 8105 of 2024**

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MOHAMMAD KAMAL MOHAMMAD SHEKH

Versus

STATE OF GUJARAT

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Appearance:

MR RISHABH R JAIN(12326) for the Applicant(s) No. 1

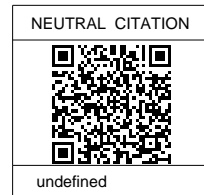
MR HK PATEL, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**Date : 06/05/2024****ORAL ORDER**

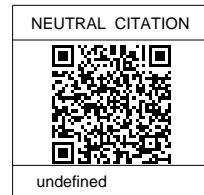
1. By way of the present petitions under Section 438 of the Code of Criminal Procedure, 1973, the petitioners have prayed to release him on anticipatory bail in case of their arrest in connection with the FIR registered as C.R.No.11214042240135 of 2024 registered with Olpad Police Station, Surat.

2. Learned advocate for the petitioners submits that the petitioners are falsely implicated in the offence. It is submitted that since complainant has changed his mind, now he has stated that first 8 pages of the power of attorney is changed. It is further submitted that earlier with identical allegations, the complainant has filed written complaint before the Olpad Police Station, whereupon on 22.04.2021, detail comprehensive report was filed running in 17 pages by PI, Olpad Police Station stating that allegations in the written complaint are not substantive and there is no reason to lodge FIR. Learned advocate for the petitioners submitted that thereafter Mr.Zahir Shaikh who is



alleged power of attorney of complainant has filed three suit and thereafter, complainant has filed one suit, in total four suits are pending before the learned Civil Court for cancellation of power of attorney and cancellation of sale deed. It is submitted that in the said proceedings, there is no interim relief in favour of the complainant. It is submitted that thereafter, on 24.04.2023 another written complaint was filed before concerned police station suppressing facts of filing of civil suits. It is submitted that complainant once failed to get relief from learned Civil Court, again he has given dispute to colour of criminal proceedings.

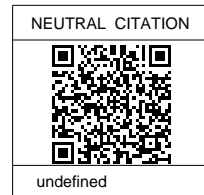
2.1. It is submitted by learned advocate for the petitioners that if we go by pleadings in the civil suit, complainant was knowing since 2019 that alleged power of attorney is forged and yet there is explanation in the FIR filed in the year 2024. It is submitted that police did not consider written complaint of complainant in the year 2021, but closure of written complaint was never challenged by the complainant before the higher forum or Court. It is submitted that basis of very same power of attorney, sale deed was executed in favour of Olpad Gram Panchayat (page no.268 to 311) and subsequently same has been reversed by Olpad Gram Panchayat as they were not in need of land. This transaction was never questioned that such transaction was executed on forged power of attorney. It is therefore, submitted that the petitioners may be granted anticipatory bail. It is further submitted by learned advocate for the petitioners that role of the petitioners is simplicitor to the effect that one of the petitioner has purchased stamp paper and another has signed



sale deed which is alleged to have been executed upon forged power of attorney.

2.2. Apart from above, learned advocate for the petitioners submit that the petitioners are resident of Surat and they are ready and willing to co-operate in investigation. There is no flight risk. It is also submitted that there is delay of 5 years in lodging FIR. Therefore, it is submitted that petitioners may be granted anticipatory bail on suitable conditions.

3. Learned advocate Mr. Aspi Kapadia for the complainant submits that one of the petitioner has changed the stamp papers which was initially purchased in genuine or original power of attorney and whereupon he has struck out certain lines and later on the petitioners who are hand in glove with main accused changed first 8 pages of power of attorney. It is submitted that upon such power of attorney, the petitioner no.1 executed sale deed in his favour. This is typical modus operadi whereby the petitioners have helped main accused to commit offence. It is submitted that so far as written complaint is concerned, learned advocate for the complainant submitted that at earlier point of time, the complainant could not place on record certain facts and it has resulted into report by the concerned police station in not believing complaint of the complainant. It is further submitted that out of four suits, three suits are collusive suits and since the complainant came to know about three collusive suits, he immediately filed fourth suit for cancellation of sale deed. Thereafter, the complainant has given another written complaint narrating all aspects including previous written

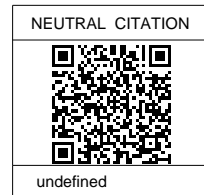


complaint as well as pendency of civil suits. For the reasons bet known to the person noting FIR has not included those averments in the FIR. It is submitted that complainant has never suppressed any aspect from Police Inspector for filing FIR. It is submitted that since the petitioners who are indulged in the offence whereby someone's valuable property has been swindled away, the petitioners may not be granted anticipatory bail and therefore, it is submitted to dismiss the petition.

4. Joining argument of learned advocate for the complainant, learned APP for the respondent-State submitted that one if the accused is nephew of main accused no.1, so it indicates that accused are not only employee of accused no.1. It is submitted that petitioners are involved in the offence pertaining to swindling immovable property of innocent person and therefore, it is submitted that the petitions may be dismissed.

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) So called forged power of attorney took place in the year 2019.
- (ii) Written complaint did not yield in favour the complainant. Comprehensive report was filed by Olpad Police Station and it was never challenged or questioned before higher court / forum. The report was filed in the



year 2019.

(iii) Though learned advocate for the complainant quelled that three suits are collusive suits and one is filed by complainant, the fact emerges that civil litigation are pending before the appropriate Court and learned Civil Court is seized with the issue.

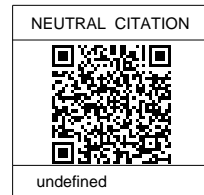
(iv) Even if take last civil suit filed by the complainant in the year 2023, there is delay of atleast 8 to 9 months in filing FIR.

(v) Dispute pertains to documentary evidence and they are already filed in civil proceedings and the documentary evidence are available with the Investigating Officer.

(vi) All the above aspects are sufficient enough to exercise discretion in favour of the petitioners to grant anticipatory bail.

(vii) Role is the petitioners is truncated one. The petitioners are persons who have either purchased stamp papers or signed in sale deed which is executed on forged power of attorney.

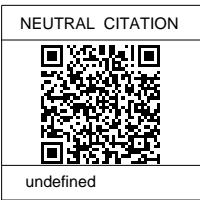
6. Having heard the learned advocate for the parties and perusing the investigation papers, it is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon'ble Apex Court on 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.11214042240135 of 2024 registered with Olpad Police Station, Surat**, 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 **15.05.2024 and 16.05.2024** 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 petitioners, 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 petitioners on bail. Direct service is permitted.

SATISH

(J. C. DOSHI,J)