

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 8303
of 2024**

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ANKIT RAJIVKUMAR PATEL
Versus
STATE OF GUJARAT
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Appearance:
MR YATIN OZA, SR. ADVOCATE with MR PINAKIN M RAVAL(2495) for the
Applicant(s) No. 1
MR SOHAM JOSHI, ADDL. PUBLIC PROSECUTOR for the Respondent(s)
No. 1
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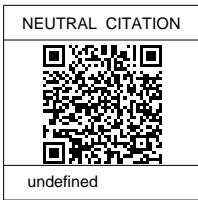
CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 09/05/2024

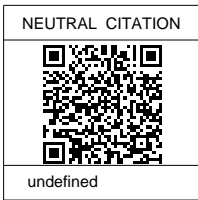
CAV ORDER

1. By way of the present anticipatory bail application filed under Section 438 of the Code of Criminal Procedure, 1973, the petitioner has prayed to release him on anticipatory bail in case of his arrest in connection with the FIR registered as C.R.No.11201001230010 registered with Gandhinagar Zone CID Crime Police Station.

2. The complaint was registered being FIR No: 11201001230010 of 2023 registered with CID Crime, Gandhinagar on 20/12/2023 in respect of an alleged offence under section- 467, 468, 471, 120B of Indian Penal Code. Said FIR was launched by Mr. Virendrasinh Indrasinh Parmar who is serving as an assistant head constable at CID Crime police station, Gandhinagar, and in the said FIR, it is alleged that the



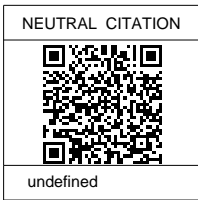
petitioner herein along with the co-accused namely Vishal Rameshbhai Shah who are running the business of visa consultancy in the name of "EMPIRE OVERSEAS SERVICES" (in short "the firm"), made/issued false documents and marksheets required for the work permits and student visas for countries like USA, Canada and UK. It is further alleged that two files were found in which 1st file contains heading of "Return passport file and another file contains color xerox of marksheets of students from Gujarat Secondary and Higher Secondary Education Board along with marksheets of other universities. One of the file contains the marksheets of Mr. Soham Lalabhai Chaudhary for 1st, 2nd, 3rd, 4th, 5th and 6th semester issued by "The maharaja sayajirao university of Vadodra". It was alleged that such marksheets and degree certificates given to Mr. Soham Lalabhai Chaudhry by the maharaja sayajirao university of Vadodra was false and fabricated. Such allegation of fabrication of documents being marksheets and degree certificate of Soham Lalabhai Chaudhary was based upon the verification made, by the CID crime Vadodra on 19/12 / 2023 , at maharaja sayajirao university of Vadodra. During the said verification/ investigation at maharaja sayajirao university of Vadodra it was found out that all such marksheets and degree certificates of Mr. Soham Lalabhai Chaudhary are fake and falsely made by the firm. It is most humbly stated that this Xerox documents were also not used by the petitioner anywhere, therefore contrary to the sections with regard to forgery are not applicable to petitioner herein or the allegation qua forgery is not valid against the petitioner herein. Hence, present FIR.



3. Heard learned Senior Counsel Mr. Yatin Oza appearing with learned advocate Mr. PM Raval for the petitioner and learned APP Mr. Soham Joshi for the respondent State.

4. It is sought to be submitted by learned Senior Counsel Mr. Yatin Oza that the petitioner is nowhere connected with the firm namely Empire Overseas Services, against which the entire allegation of preparing fake and forged mark-sheet, degree certificates and documents are levelled. He would further submit that since last more than one year, the petitioner has not even gone to the office of the firm and it could be verified from the CCTV footage obtained by the investigating officer. He would further submit that name of the present petitioner is coming from the statement of the co-accused, but it has no evidentiary value. He would further submit that the petitioner has not prepared any forged or fake mark-sheet and there is no evidence much less evidence, which spells that the petitioner is involved in making forged and fake mark-sheet and used the same as genuine once.

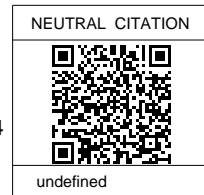
5. Apart from the above submission, learned Senior Counsel Mr. Yatin Oza would submit that the petitioner has joined the investigation and on previous three occasions, when the investigating officer has called the petitioner, he appeared before the investigating officer and handed over all the documents, which have been asked for by the investigating officer. In view of that, the petitioner may be enlarged on anticipatory bail as the petitioner has cooperated with the investigation and there is no flight risk since the petitioner is permanent residents of



Gandhinagar. He would further submit that the other co-accused are enlarged on regular bail by the concerned Court and therefore, principle of parity would attract. He would further submit that the entire offence is related to the documentary evidence and the same is lying with the investigating officer.

6. Upon above submissions, learned Senior Counsel Mr. Yatin Oza requests to grant anticipatory bail to the petitioner.

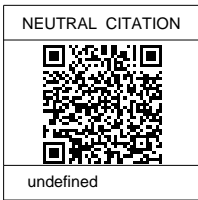
7. On the other hand, learned APP would submit that it is incorrect to state that the petitioner has cooperated with the investigation. He would further submit that previously, the janvajog entry was made before the concerned police station and during inquiry of janvajog entry, he remained present, but thereafter, once the FIR is registered, the petitioner is running away and therefore, on 29.12.2023, the concerned authority has issued **look-out circular** against petitioner and the same is in force and that the petitioner has not challenged said circular. He would further submit that the petitioner has forged and fabricated the mark-sheet, IT returns etc. and is a core part of racket of sending aspirants to US, Canada, UK etc. on work permit or student visa by supplying forged documents. The petitioner is one of the main kingpin being the owner of the firm. He would further submit that the petitioner has his office in Navrangpura apart from the office at Capital Icon building in name of Empire Overseas Services. He would further submit that the police has raided the Navrangpura office also and found many fake and forged documents from the office and they are taken as muddamal. Therefore, prima facie, it links the



petitioner with the offence. He would further submit that statement of co-accused Mr. Vishal is sufficient enough to link the present petitioner with the offence. He would further submit that since the petitioner is running away from the investigation, the petitioner should not be granted anticipatory bail.

8. Upon such submission, learned APP requests to dismiss the petition.

9. Having heard learned advocates for the respective parties, at the outset, if we go to the allegations levelled in the FIR, it is stated that the Empire Overseas Services firm was raided on 15.12.2023 by the CID Crime and fake mark-sheet and degree certificates of various universities and IT returns were found from there. One Ms. Monali Bhavsar was found there and she said that the owner of the firm is the present petitioner. Mr. Vishal is considered to be the Manager of the firm. In the unqualified statement of Mr. Vishal, he has unequivocally mentioned that he is working in the firm in the post of Councilor – cum – Manager since last four years and the owner is Mr. Ankit Patel i.e. present petitioner and the petitioner is paying salary to him. He has also stated the *modus operandi* in which way the petitioner was forging documents to help aspirants to go abroad and as such, the way he has committed the offence. He has also stated that initially, the office of the firm was situated in Gandhinagar and several people were working there. He has also stated that the firm under the ownership of the petitioner was providing facility to prepare documents for the aspirants, who intend to visit USA, UK, Canada etc. on student visa or

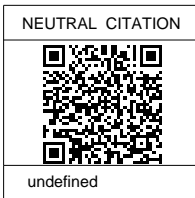


work permit visa and for that, fake documents were prepared to facilitate them for getting the visa. It is also revealed from the statement of one of the victims Mr. Harpalsinh that though the person was passed upto 7th standard, fake and forged mark-sheets/certificates of Bachelor of Engineering were prepared to facilitate him to go abroad. Thus, it prima facie appears that the petitioner is the main accused and he is the owner of the firm.

10. What further appears from the investigation papers that though the petitioner is the owner of the firm, he has forced another accused Mr. Vishal to execute the rent agreement with the owner of office No.306, Capital Icon building, which is revealed from the statement of Mr. Vishal. Apart from that, in another office of the petitioner at Navrangpura, fake and forged documents were also found.

11. It was also argued that name of the present petitioner is coming from the statement of the co-accused, which has no evidentiary value and therefore, there is no material on record, which linked the petitioner with the offence except the statement of the co-accused.

12. Recently, the Coordinate Bench of this Court in case of **Baraiya Rameshbhai Kamalshibhai Versus State Of Gujarat** rendered in **Criminal Misc. Application No.10244 of 2023**, dealt with the value of the statement of the co-accused at the time of deciding bail application. Para 17 of said judgment is relevant, which reads as under:-



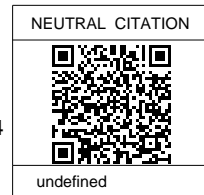
“17. In so far the statement of co-accused is concerned, it provides clues to the investigating agency as to how to investigate the case and thereafter the investigating officer has to collect evidence against the person who has been named as the accused. In the light of the above provisions, there is no bar on considering the statement of co-accused for investigation purposes. At this stage, it is relevant to note that this Court has observed in the case of Mohmed Salim Abdul Rasid Shaikh v. State of Gujarat, reported in 2001(2) GLR 1580, in para 12, as under: ...

It is pertinent to note that the prosecution case rests mainly on circumstantial evidence and police has received a clue against the present applicant from the statement of co-accused, already arrested. Irrespective of the fact that statement of co-accused to police is not admissible in evidence before the Court, but police can certainly consider that statement as a clue while interrogating him further or other persons arrested or interrogated during the course of investigation

17.1 Further, in the case of Mohammed Fasrin v. State Rep. By the Intelligence Officer, rendered in Criminal Misc. Application No.296 of 2014, the Honble Supreme Court observed as under: .The confessions of a co-accused gives a clue to the investigating authorities as to how to investigate the matter and against whom to investigate the matter. Thereafter, it is for the investigating officers to collect evidence against the said person who has been named by the co-accused.....

17.2. Hence, the argument put forth by the learned advocate for the applicant, which suggests that the evidence against the present applicant consists solely of statements made by co-accused individuals, it is essential to emphasize that in cases where the accused is charged with conspiracy, the statements of co-accused are indeed relevant. Furthermore, these statements have the value to offer leads clue for further investigation. Hence, argument canvassed by the learned advocate is not sustainable.”

13. The conduct of the petitioner is also found improper. **Look-out circular** is also issued against him. The petitioner has not challenged the same. It is a serious offence and the involvement of the petitioner is prima facie established. In these facts and circumstances, the Court would be loath to lean in favour of grant of pre-arrest bail in absence of any other overriding considerations. The tenure of the offence exposing from the FIR indicates that the offence is in nature of white collar and socioeconomic offence. It is true that section 438 of the Code of



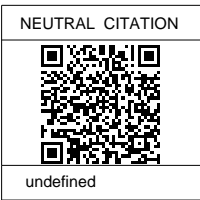
Criminal Procedure, 1973 is providing safeguard to the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. But, the offence, which is committed very smartly is not just offence against any individual rather is against large societal interest and public welfare. Allegations of preparing by preparing fake and forged mark-sheets, degree certificates as well as IT returns tilt delicate balance of the personal liberty and societal interest in favour of later one. One could not deny that arrest is part of process of investigation and intended to secure several purposes including to discover the material facts and relevant information.

14. In above circumstances, considering the role of the present petitioner in commission of the offence in question, if the petitioner is equipped with pre-arrest bail or granted anticipatory bail, the need of investigation may be jeopardized.

15. At this juncture, I may refer to the judgment of the Hon'ble Apex Court in the case of **P. Chidambaram V/s Directorate of Enforcement** reported in **AIR 2019 SC 4198**, the Hon'ble Supreme Court has held as follows:

"The legislative intent behind the introduction of Section 438 CrPC is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights – safeguarding the personal liberty of an individual and the societal interest.

Ordinarily, arrest is a part of procedure of the investigation to

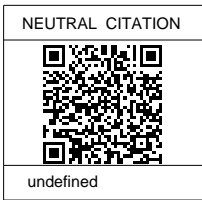


secure not only the presence of the accused but several other purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. It may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In this view, it cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant/applicant under Article 21 of the Constitution of India.

Consequently, power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Section 438 CrPC is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. Anticipatory bail is to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy".

16. What further requires to be noted that it is not the case of the petitioner that FIR filed against him is made with a view to humiliate or tarnish the image of the present petitioner.

17. At this juncture, I may also refer to judgment of Hon'ble Apex Court in the case of **Jaiprakash v/s. State of Bihar [2012**



(4) SCC 379]. In para 13 and 18, it has been held as under :-

"13. There is no substantial difference between Sections 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.

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18. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See: D.K. Ganesh Babu v. P.T. Manokaran & Ors., (2007) 4 SCC 434; State of Maharashtra & Anr. v. Mohd. Sajid Husain Mohd. S. Husain & Ors., (2008) 1 SCC 213; and Union of India v. Padam Narain Aggarwal & Ors., (2008) 13 SCC 305)."

18. Resultantly, the petition fails and stands dismissed.

SHEKHAR P. BARVE

(J. C. DOSHI,J)