

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL)
NO. 9213 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE A.G.URAIZEE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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PATEL SANJAYKUMAR PRAHELADBHAI....Applicant(s)

Versus

STATE OF GUJARAT....Respondent(s)

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Appearance:

MR UMESH TRIVEDI, ASSISTED BY MR TEJAS P SATTA,
 ADVOCATE for the Applicant

MR MITESH AMIN, PUBLIC PROSECUTOR, ASSISTED BY MR
 HARDIK SONI, ASST. PUBLIC PROSECUTOR for the Respondent

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CORAM: **HONOURABLE MR.JUSTICE A.G.URAIZEE**

Date : 22/05/2015

ORAL JUDGMENT

The applicant has preferred this application under Section 438 of the Code of Criminal Procedure, 1973 for being enlarged on anticipatory bail in connection with the offence

registered against him with Visnagar Town Police Station vide I C.R.No.32 of 2015 for the offences punishable under Sections 406, 420, 409, 465, 468, 471, 114 and 120B of the Indian Penal Code and under Sections 2(c), 8, 13(1)D of the Prevention of Corruption Act.

2 I have heard Mr Umesh Trivedi with Mr Tejas Satta, learned advocate for the applicant and Mr Mitesh Amin, learned Public Prosecutor, assisted by Mr Hardik Soni, learned Additional Public Prosecutor for the State. I have also perused the papers of investigation.

3 The case of the prosecution is that a show-cause notice dated 27th August 2013 was issued in respect of certain illegalities and irregularities in the auction proceedings of 26 plots for shops by the Agricultural Produce Market Committee, Visnagar ('the Market Committee' for short). Thereafter, the District Registrar, Cooperative Societies, Mehsana filed a complaint against the Chairman and other members of the Market Committee with Visnagar Town Police Station being I C.R.No.32 of 2015 for the aforementioned offences.

4 The irregularities/illegalities which are complained of in the complaint are mainly in respect of disposal of 26 plots for shops belonging to the Market Committee. It is alleged in the complaint that the Chairman and Members of the Market Committee indulged into irregularities and illegalities in disposal of these plots to the detriment of the Market Committee and for personal gain.

5 The applicant preferred an application under Section 438 of the Code of Criminal Procedure, 1973 in the court of the learned Additional Sessions Judge, Visnagar, which came to be dismissed by order dated 21st April 2015. Therefore, the applicant has preferred this application in this Court under Section 438 of the Code of Criminal Procedure, 1973 for being enlarged on anticipatory bail in connection with the offence as aforesaid.

6 Mr Umesh Trivedi, learned advocate for the applicant has vehemently submitted that a bare reading of the complaint does not disclose that there is forgery of the documents nor is there any whisper with regard to any corruption having been done by the applicant herein. It is his further contention that when the so called offending Resolution No.14 was passed, the applicant was not the Director. The applicant came to be appointed as Director only on 16.12.2012. It is his further contention that whatever amount that is realized from the disposal of the plots is deposited in the account maintained by the Market Committee and not a penny has gone to the pocket of the applicant. He would further submit that as per Section 10 of the Agricultural Produce Markets Act, 1963 ('the Act' for short), the Market Committee is deemed to be a body corporate, having its own seal and perpetual succession. The only offence, at the most, which can be said to have been committed by the applicant is breach of Circular and thereby no criminal offence can be said to have been committed by the applicant. It is his further contention that no inducement is given by the applicant to anyone as is very clear from the reading of the FIR and therefore there is no breach of trust

and therefore provisions of Section 420 of IPC are not attracted to the facts of the present case. He would also submit that the accounts of the Market Committee are audited at a regular interval and no illegality or irregularity was noticed by the Auditors. No objection was taken during such audit of the accounts to the effect that the plots are sold in breach of the Circular. Mr Trivedi has further submitted that entire complaint proceeds on conjectures and surmises inasmuch as it is assumed that the plots which were not ultimately taken by the successful bidders if were put to re-auction, would have fetched more price. It is the submission of the learned advocate Mr Trivedi that it is because of political rivalry that a false complaint is foisted upon the applicant to wreck a political vendetta.

7 Mr Trivedi next contended that the encase case is based on documentary evidence which is very much available and in fact they are in the custody of the Investigating Officer and therefore when the entire case is based on documentary evidence, custodial interrogation of the applicant is not required. He further submitted that there is no complaint by any of the purchasers of the plots in auction and so far as allegation regarding evasion of stamp duty is concerned, the stamp duty can always be recovered if there is any deficit stamp duty. Mr Trivedi has also contended that violation of the conditions of the Circular by the applicant cannot be said to be an offence, but, at the most it is an irregularity and Circular cannot by itself overreach the process of parent Act. Mr Trivedi has also argued that the applicant has no previous police record and there are no criminal antecedents inasmuch the criminal case of the year 2005 was in respect of a loan

transaction of which the applicant was a loan agent and the loan amount has already been recovered from the original loanee. While submitting that such a criminal case cannot be cited as a criminal antecedent, he has urged that the applicant may be released on anticipatory bail on suitable conditions that may be imposed by this Court.

8 On the other hand, Mr Mitesh Amin, learned Public Prosecutor has submitted that there is material or record of the investigating papers in the form of statements of the witnesses from which it is disclosed that on the day of the auction when 26 plots were put to auction, only 18 plots were auctioned and rest of the plots were sold to the relatives of the applicant and Chairman of the Market Committee. It is his further contention that it further transpires from the statement of one of the witnesses that said witness was asked to prepare the auction proceedings wherein 26 plots were said to have been sold, but, as submitted earlier, only 18 plots were put to auction while the remaining were sold to the relatives of the applicant. It is further submission of Mr Amin that it is revealed from the statement of one another witness that the money was recovered from one of the successful bidders in the name of development charges, but receipts for this recovery are not given to the said witness despite repeated demands. Mr Amin has expressed an apprehension that these three important witnesses seem to be pliable and if the applicant is released on pre arrest bail, there is a strong possibility of tampering with the evidence. Mr Amin has relied upon the decision of the Apex Court in the case of State Represented by the CBI v. Anil Sharma, (1997) 7 SCC 187 [paragraph 6] that custodial interrogation is very

qualitative and illustration oriented and therefore if the applicant is released on anticipatory bail, the investigating agency will not get required cooperation from the applicant.

9 It is the further contention of Mr Amin that criminal case of 2005 registered against the applicant cannot be brushed aside lightly and to properly investigate the case such criminal antecedents have to be kept in mind though the loan amount might have been ultimately paid up by the original loanee. He has drawn the attention of this Court to paragraph 7 of the application to contend that the applicant has made a wrong and misleading statement and has suppressed the fact of his criminal antecedent and therefore looking to the overall facts of the case and the serious involvement of the applicant, he has urged that this application may be rejected.

10 Mr Trivedi, learned advocate for the applicant has urged in rejoinder that the complainant himself had conducted an enquiry under Section 44 of the Act and he had not detected any illegalities or irregularities, but, now, in the complaint he has come out with various so called illegalities or irregularities with a view to frame the applicant in a false case. It is his further contention that initially the investigation was conducted by Taluka Police during which no illegality or irregularity was found, but only after the investigation was transferred to LCB and filing of anticipatory bail application before the Sessions Court, Visnagar that the aforesaid illegalities or irregularities are stated to have been detected. He, therefore, urged that the applicant may be granted anticipatory bail.

11 Having heard learned advocates on either side, it appears that the gravamen of the complaint is the auction of 26 plots belonging to the Market Committee. It is an undisputed fact that 26 plots belonging to the Market Committee were resolved to be sold by Resolution No.14 dated 29th April 2011. It is also an undisputed fact that when the said resolution was passed the present applicant was not a member or Director of the Market Committee. However, the said resolution was acted upon and 26 plots belonging to the Market Committee were put to auction when the applicant was holding the post of Director of the Committee since 16.2.2012. In this background of undisputed facts, this Court has to consider as to whether any criminal act can be said to have been committed by the applicant or not.

12 It is true that initially the enquiry under Section 44 of the Act was conducted by the complainant himself being the Deputy Director and District Registrar (Cooperative Societies), Mehsana. His report is very much there in the investigation papers. It appears that various illegalities or irregularities were voiced and therefore the enquiry under Section 44 of the Act was conducted by the complainant. On perusal of the report it is difficult to agree with the submission of learned advocate for the applicant that merely because the irregularities or illegalities highlighted in the present complaint against the present applicant and others is not elaborately dealt with in the report. Subsequently, the complainant has lodged the complaint under the written direction of the Director of Agricultural Marketing and Rural Finance, Gujarat State, Gandhinagar. Therefore, when an investigation has taken place in pursuance of this complaint,

this Court has to find out whether there is any material in the complaint to connect the present applicant with the commission of crime.

13 A bare reading of the complaint only reveals that the auction of 26 plots took place on 23.4.2012 in which there was violation of Circular dated 27.11.1989 and therefore at first blush the argument canvassed by the learned counsel for the applicant that only irregularity or illegality for non adherence of the Circular dated 27.11.1999 is complained of and the applicant has not indulged into any criminal offence which would fall under Sections 406, 420, 409, 465, 468, 471 and 114 of IPC appears attractive, but the applicant can be said to have committed aforesaid offences under IPC and other offences if the investigation papers conducted by LCB Police Station are perused which would reveal certain startling facts which, according to my opinion, prima facie disclose commission of a serious offence. The same cannot be taken lightly and which would not entitle the applicant to a pre arrest bail. Initially, the investigation was conducted by the Taluka Police Station, but thereafter the same was transferred to LCB Police Station. The contention of Mr Trivedi, learned advocate for the applicant that so long as the investigation was with Visnagar Taluka Police Station there was no material against the applicant and the so called incriminating material and incriminating statements of the witnesses were recorded only after the applicant preferred the application under Section 438 of the Code of Criminal Procedure, 1973 before the Sessions Court, Visnagar has little substance. The investigation by Visnagar Taluka Police did reveal commission of grave offences and thereafter the investigation came to be

transferred to LCB Police Station. At this stage, it would be travelling beyond unreasonable limits to record a conclusion that the investigation was transferred to LCB and LCB has recorded incriminating statements of the witnesses only after filing of the application under Section 438 of Code of Criminal Procedure, 1973 by the applicant in the trial court solely with a view to falsely implicate the applicant in the case of political vendetta.

14 The investigation papers submitted by the learned Public Prosecutor for the perusal of the Court *prima facie* reveal commission of the offence by the applicant. The *modus operandi* disclosed during the investigation for the siphoning of the money belonging to the Market Committee and the act of the undervaluing the sale transactions to the extent of 45% and recovering the rest of the amount to the extent of 55% towards development charges of the Market Committee and thereafter not issuing the receipts in respect of receipt of development charges itself is a very grave and serious offence. The criminal antecedents of the applicant inasmuch as his involvement in a criminal case of 2005 is highlighted by the learned Public Prosecutor only to buttress his contention that the applicant is not new to criminal proceedings. It may be that nothing turns on the solitary criminal antecedent of the applicant as it was in respect of a loan transaction, but still however the involvement of the applicant in a criminal case cannot be lost sight of. The contention raised by learned advocate Mr Trivedi that the breach of circular would not amount to any criminal offence and that a circular cannot bypass or overreach the provisions of the Principal Act and therefore the applicant cannot be said to have committed any

offence cannot be countenanced because, as noted in the foregoing paragraphs the investigation conducted so far reveal a *prima facie* commission of serious offence and therefore the benefit of section 438 of the Code cannot be extended to the present applicant as held by the Honourable Supreme Court in the case of State v. Anil Sharma (*supra*) in paragraph 6, which reads as under:

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

15 The present case is the one in which I am of the opinion that looking to the investigation carried out thus far there is a *prima facie* involvement of the applicant in the gross irregularities committed in auctioning the plots belonging to the Market Committee in flagrant violation of the Circular. It further *prima facie* transpires from the investigation papers that the custodial interrogation of the applicant is necessary to unearth the extent of financial loss caused to the Market Committee because of the offending activities of the applicant and the involvement of the applicant in the crime.

In the aforesaid premises, I do not find any substance in this application and therefore the same deserves to be rejected and is hereby rejected. Rule is discharged.

(A.G.URAIZEE, J.)

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