

2023 SCC OnLine Guj 2559

In the High Court of Gujarat at Ahmedabad  
(BEFORE NIRZAR S. DESAI, J.)

Sandipbhai Bhikhubhai Padsala

*Versus*

State of Gujarat

R/Criminal Misc. Application No. 7336 of 2023

Decided on August 17, 2023

Advocates who appeared in this case:

Mr. N.D. Nanavaty, Senior Counsel Assisted by Mr. Dharamveersinh J Solanki for the Applicant.

Mr. Manan Mehta, APP for the Respondent No. 1.

Mr. K.B. Anandjiwala, Senior Counsel Assisted by Mr. Yash Dave and Mr. Vishal K Anandjiwala for the Complainant.

The Order of the Court was delivered by

NIRZAR S. DESAI, J.:— By way of the present application preferred under Section 438 of the Criminal Procedure Code, 1973, the applicant seeks anticipatory bail in connection with FIR No. 11191042230105 registered with Satellite Police Station, Dist. Ahmedabad for the offences punishable under Sections 406, 420 and 120-B of the Penal Code, 1860.

2. I have heard Mr. N.D. Nanavaty, learned Senior Counsel assisted by Mr. Dharamveersinh J. Solanki, learned advocate appearing for the applicant, Mr. Manan Mehta, learned Additional Public Prosecutor appearing for the respondent - State and Mr. K.B. Anandjiwala, learned Senior Counsel assisted by Mr. Yash Dave and Vishal K. Anandjiwala, learned advocates appearing for the original complainant.

3. The FIR in question came to be registered by Kaushik Kumudchandra Kapadia against the present applicant alleging therein that he is a Partner of Kapadia Marketing Incorporation, Kapadia Finvest Tradeo and Kapadia Investment and he is having license to lend the money. As per the FIR, the applicant is known to him and he used to borrow the amount from all the three Firms referred above of the first informant. It is further stated that right from 2012 - 13 till 2022, the present applicant has borrowed a sum of Rs. 8,23,78,522.32 from Kapadia Marketing Incorporation and a sum of Rs. 2,79,10,039/- towards registered mortgage of land totalling to Rs. 11,02,88,561/-. The present applicant borrowed from another firm, namely, Kapadia Finvest Tradeco a total amount of Rs. 5,80,91,764.86/- + interest and

towards land and in all, total amount of Rs. 16,83,80,326.18/-. As per the Mortgage Deed of the concerned land, if the present applicant fails to repay the amount borrowed by him within a period of 24 months from the date on which the mortgage deed was executed, then he was supposed to execute the Sale Deed in respect of land in question in favour of the first informant. As the applicant failed to repay the amount borrowed by him, a registered Sale Deed in respect of the land in question was to be executed and for that, towards Stamp Duty, a sum of Rs. 3,04,000/- was paid by E-challan before the Sub-Registrar by the first informant and the said document was duly signed by both the parties and appointment for execution of the Sale Deed was also taken. However, the present applicant did not remain present on that particular date and that is how the Sale Deed could not be executed and, therefore, the FIR was filed by the first informant.

4. Mr. N.D. Nanavaty, learned Senior Counsel assisted by Mr. Solanki appearing for the applicant made following submissions:—

- (i) That while registering the FIR, the first informant has suppressed vital facts about the pendency of civil litigation and other litigation concerning the same land which were initiated prior in point of time by the present applicant.
- (ii) That applicant has also preferred two Special Civil Suits under Section 60 of the Transfer of Property Act for redemption of mortgage as the present applicant can legally avail the remedy provided. In support of this submission, he has relied upon decision of the Hon'ble Supreme Court in the case of *Narandas Karsondas v. S. A. Kamtam*, (1977) 3 SCC 247 and in the case of *L.K. Trust v. EDC Limited*, (2011) 6 SCC 780.
- (iii) Though it is pointed out by way of affidavit by the first informant as well as in the Police papers that the present applicant is having three antecedents in respect of similar offences, the applicant is granted anticipatory bail in respect of two of those offences and in respect of third offence, anticipatory bail application of the applicant is pending before this Court wherein by interim order, applicant has been granted interim protection.
- (iv) As far as the offence under the Negotiable Instruments Act is concerned, there are three cases registered against the applicant, out of which, in one case, applicant was convicted and the said order of conviction was challenged by the applicant before the Sessions Court and the Sessions Court quashed the conviction order and remanded the matter for fresh consideration to the learned Trial Court and in respect of two cases, the same are pending with the competent Court.
- (v) In nut-shell, the submission of learned Senior Advocate Mr. Nanavaty is that though the present dispute between the

applicant and the first informant is of purely civil in nature, by way of the FIR in question, the first informant is trying to give criminal colour to the civil dispute.

(vi) Reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Ravindra Saxena v. State of Rajasthan*, (2010) 1 SCC 684 and submitted that in similar set of facts, the Hon'ble Supreme Court granted anticipatory bail to the applicant as the Hon'ble Supreme Court found that the dispute between the parties was of civil in nature.

5. By making the aforesaid submissions, learned Senior Counsel Mr. Nanavaty prayed for grant of anticipatory bail to the applicant.

6. Except the above submissions, no other submissions were made by learned Senior advocate Mr. Nanavaty.

7. Mr. Manan Mehta, learned Additional Public Prosecutor appearing for the respondent - State has vehemently opposed this application and submitted that the present applicant has three antecedents of similar nature registered against him, details of which are as under: —

(i) FIR No. 11191011230074 of 2023 registered with Crime Branch, Ahmedabad on 23.3.2022 for the offences punishable under Section 406 and 420 of the Penal Code, 1860.

(ii) FIR No. 11192063230261 of 2023 registered with Vivekanand Nagar Police Station, Ahmedabad (Rural) on 3.6.2023 for the offences punishable under Sections 403, 409, 420, 467, 468, 114 and 120-B of the Penal Code, 1860.

(iii) FIR bearing I CR. No. 12 of 2022 registered with Palghar Police Station, Dist. Dholvad on 2.2.2022 for the offences punishable under Sections 420, 467, 468, 469 and 471 of the Penal Code, 1860.

8. He further submitted that the applicant was served with a notice under Section 41-A of the Cr. P.C. for recording his statement. However, despite service of notice, by which he was asked to remain present before the Investigating Officer on 29.3.2023, till today, the applicant has not cooperated with the investigation. He further submitted that considering the huge amount involved in the offence in question as well as considering the past antecedents and looking to the conduct of the applicant as he is facing cases under the provisions of Section 138 of the Negotiable Instruments Act as the cheques which were given by the applicant towards repayment of amount borrowed by him were bounced and, therefore, the present applicant may not be considered for anticipatory bail.

9. Learned APP drew the attention of the Court from the Police papers that the present applicant himself has given an undertaking on 16.9.2021 and thereby he undertook to execute the Sale Deed and

thereafter, draft of the Sale Deed was also signed by the present applicant, but the day on which the Sale Deed was to be executed, father of the applicant did not remain present before the Sub-Registrar and that is how the Sale Deed could not be executed.

10. At this stage, learned Senior Counsel Mr. Nanavaty upon instructions from learned advocate Mr. Solanki who submitted on the basis of instructions received by him that at that time, father of the applicant was bed-ridden and, therefore, he could not remain present for execution of the Sale Deed.

11. By making the aforesaid submissions, learned APP submitted that looking to the antecedents, past conduct of the present applicant as well as considering the fact that huge amount of Rs. 16 Crores is involved in the offence in question, the present application seeking anticipatory bail may be rejected by this Court.

12. Mr. K.B. Anandjiwala, learned Senior Counsel assisted by learned advocates Mr. Dave and Vishal K. Anandjiwala appearing for the first informant, made following submissions:—

- (i) Though the applicant has borrowed the amount only from Kapadia Finvest Tradeco and Kapadia Marketing Incorporation, the present applicant has along with his application while providing the details about the transactions has referred to the amount repaid to Kapadia Investment also, which has nothing to do with the offence in question. He would further submit that a reference about the amount repaid to Kapadia Investment is given by the applicant only with a view to mislead this Court.
- (ii) The conduct of the applicant of giving an undertaking on 16.9.2021 that he will execute the Sale Deed and thereafter signing the draft Sale Deed and thereafter saying that the father of the applicant did not remain present at the relevant point of time for execution of the Sale Deed, itself speaks about the intention of the present applicant.
- (iii) There are three antecedents against the present applicant and considering the fact that all the offences are of similar nature, shows the intention of the applicant. Even if the applicant is granted anticipatory bail in remaining three cases, cannot be said to be a ground to grant anticipatory bail to the applicant and his role in the present offence is required to be seen.
- (iv) That one of the conditions of the mortgage deed specifically states that the amount was to be repaid within a period of 24 months from the date on which it was executed. The mortgage deed was executed on 5.7.2015 and, therefore, the period of 24 months got over on 4.7.2017 and in absence of there being any clause about payment of further interest or otherwise, it was the duty of the present applicant to execute the Sale Deed which

despite taking appointment and payment of stamp duty to the tune of Rs. 3,04,000/-, the applicant ensured that the Sale Deed is not executed and, therefore, there is element of criminality in his conduct and, therefore, he should not be granted anticipatory bail.

13. By making the aforesaid submissions, learned Senior Counsel Mr. Anandjiwala prayed for rejection of this application.

14. Except the above submissions, no other submissions were made by learned Senior advocate Mr. Anandjiwala.

15. I have heard learned advocates appearing for the respective parties. On perusal of the record, I find that there is word against word. There are litigations in the form of complaints under Section 138 of the Negotiable Instruments Act, Civil Suits as well as Suits before the Commercial Court. However, the fact remains that the document was to be executed in September 2021. Thereafter, as the cheques issued by the present applicant were bounced, proceedings under Section 138 of the NI Act were initiated by the first informant. Thereafter, Civil Suits were filed by the present applicant as well as Commercial Suits were filed by the first informant. It is disputed by learned Senior Counsel Mr. K. B. Anandjiwala appearing for the first informant that the suits are not in respect of the land in question. However, according to learned Senior Counsel Mr. Nanavaty, in those suits, interim orders in the nature of status-quo were passed with the express consent of the present first informant which is recorded by the concerned Court. On perusal of all the above documents, it seems that there are financial transactions between the parties and as the present applicant failed to fulfill his obligations, the same has resulted into various kind of litigations.

16. As far as submission made by learned Senior Counsel Mr. Nanavaty that the applicant has preferred two suits for redemption of mortgage under Section 60 of the Transfer of Property Act as well as the decisions of the Hon'ble Supreme Court relied upon by him in support of the said submission is concerned, I am of the opinion that those two suits are pending before the competent Civil Court and, therefore, it would not be proper for this Court to say anything about those suits as this Court has considered the material available on record before this Court and, therefore, considering the overall facts and circumstances of the case coupled with the Police papers, I do not see any reason to entertain the present application.

17. I have also considered the fact that the amount involved in the offence in question is more than Rs. 16 Crores. Further, I have considered the fact that there are three other antecedents against the present applicant and it is not in dispute that the said cases are of

similar nature, though in two such offences, the applicant has been granted anticipatory bail and in one such cases, he has been granted interim protection and the anticipatory bail application is pending before this Court. What was pointed out by learned APP was the fact that the present applicant was served with the notice under Section 41-A of Cr. P.C. in the month of March 2023 asking him to remain present before the Investigating Officer on 29.3.2023, however, till date, the applicant has not remained present before the Investigating Officer which shows that the present applicant is not cooperating with the investigation. Therefore, considering the gravity of offence, conduct of the present applicant as well as the fact that there are three offences of similar nature registered against the applicant, I am of the view that the offence in question is required to be investigated thoroughly and, therefore, considering the overall facts and circumstances of the case, I deem it appropriate reject the present application and accordingly, the present application stands rejected. Rule is discharged. Interim protection granted by order dated 10.8.2023 stands vacated forthwith.

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