

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 12427 of 2022**

PATEL RAMESHCHANDRA MANGALDAS

Versus

STATE OF GUJARAT

Appearance:

MR MAULIN G PANDYA(3999) for the Applicant(s) No. 1

ADITYA R GUNDECHA(8869) for the Respondent(s) No. 1

MR. RONAK RAVAL ADDL. PUBLIC PROSECUTOR for the Respondent(s)
No. 1**CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL****Date : 01/09/2022****ORAL ORDER**

1. Heard learned Advocate Mr. Maulin G. Pandya on behalf of the applicant, learned Additional Public Prosecutor Mr. Ronak Raval on behalf of the respondent-State and learned advocate Mr. Aditya R. Gundecha on behalf of the first informant.

2. Rule. Learned APP waives service of rule on behalf of the respondent-State.

3. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant – original accused prays for being released on anticipatory bail in connection with **FIR No.-11191024220439 of 2022** registered with Ramol **Police Station, Ahmedabad** on 26.5.2022 for offences punishable under Sections 406, 420 and 120B of the Indian Penal Code.

4. Learned Advocate Mr. Pandya on behalf of the present applicant would submit that the allegations as leveled in the FIR, being that the other accused, misusing the signature of the first informant, had prepared a fraudulent power of attorney whereby the authority with regard to properties of the first informant were given to the accused no.1 Mr. Shaktisinh Zala. It is submitted that the present applicant had purchased the property from said Mr. Zala more particularly paying after a sizable sum of consideration. Learned Advocate would submit at the outset that having regard to the fraudulent nature of the power of attorney, the present applicant, had preferred an undertaking whereby he had interalia submitted that he withdraws any right, title or interest he has upon the property in question and whereas he would also execute a declaration interalia declaring that he had no right, title or interest for the property in question. Learned Advocate Mr. Pandya would also tender a further affidavit, whereby a declaration cum undertaking, has according to learned advocate, a copy has been submitted with the office of Sub Registrar and whereas the said application has not been accepted, the present applicant has placed the same for the perusal of this Court. Learned Advocate would submit that while the deed in question that is the deed entered into between the fraudulent power of attorney holder and the present applicant, has not yet been approved/ registered and whereas it is submitted that in case the same is approved, the present applicant, still would abide by the declaration cum undertaking and if required the applicant would also voluntarily enter into a cancellation deed. Learned Advocate would submit that looking to the bonafides of the present applicant, more particularly looking to the fact that the present applicant has given up his right, title and interest over the property in question, this Court may consider and release the applicant on pre-arrest bail.

5. This application has been opposed by learned APP Mr. Ronak Raval who would submit that the present applicant was purchaser of the property in question more particularly the transaction been based on the fraudulent power of attorney. Learned APP would submit that since the sizable sum appears to have been parted by the present applicant, it could not be presumed that the applicant did not know about the fraudulent nature of the transaction. To a pointed query by this Court, learned APP would submit that as of now there is no material which has been gathered by the Investigating Officer, which would show that the present applicant was aware about the fraudulent nature of the transaction. Learned APP having regard to the submissions would request this Court not to exercise discretion in favour of the applicant.

6. Learned Advocate Mr. Aditya R Gundecha on behalf of the first informant would submit that prima facie since it appears that the present applicant was not part of the conspiracy, whereby the fraudulent power of attorney had been created, and considering the undertaking as well as declaration given by the present applicant, he would not have any objection if the present applicant is released on anticipatory bail.

7. Having regard to the submissions made by learned Advocate for the parties, while this Court does not intend to discuss the issues in detail, suffice it to state that the following aspects have been taken into consideration:

[1] It prima facie appears that the present applicant, while he had entered into a transaction with the other co-accused for the purchase of the property in question, and whereas it also appears that the present applicant, was not aware about the fraudulent nature of the

power of attorney.

[2] While it is true that the onus of due diligence before entering into any transaction of the like nature, would be upon the present applicant, but at the same time it also requires to be mentioned that the present applicant has also shown his bonafides by withdrawing his rights from the properties.

[3] This Court has also considered the undertaking filed by the present applicant whereby he has interalia stated that he would not claim any right, title or interest in the property purchased by him from the other co-accused on the basis of the fraudulent power of attorney;

[4] This court has also considered that as per the undertaking given to this court, the applicant had submitted a declaration to the office of the Sub-Registrar whereby he had interalia accepted he does not have any right in the property in question and whereas he also accepts he has not purchased the property in question from its original owner;

[5] This Court also notes the statement made by learned advocate for the present applicant that while the sale deed in favour of the applicant has not yet been registered/approved, in case if the same is done, within a period of 30 days' thereafter the applicant would voluntarily go for cancellation of the said deed and whereas learned advocate Mr Gundecha would submit that the first informant would co-operate with the present applicant, as much as possible, for canceling the earlier registered sale deed;

8. Having regard to the circumstances in question, and considering the law laid down by the Hon'ble Apex Court in the case of **Siddharam**

Satlingappa Mhetre v. State of Maharashtra and Ors. reported in **(2011)1 SCC 694**, this Court is inclined to consider this application.

9. Learned Advocates for the parties do not press for further reasoned order.

10. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to **FIR No.- 11191024220439 of 2022** registered with **Ramol Police Station, Ahmedabad**, the applicant shall be released on bail on furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety of like amount, on the following conditions:

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) shall remain present at the concerned Police Station on **09.09.2022** between 11:00 a.m. and 2:00 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 his residence till the final disposal of the case or till further orders;

- (f) shall not leave India without the permission of the Court and, if having passports shall surrender the same before the Trial Court within a week.
- (g) In case the registered sale deed entered into between the accused no.1 and the present applicant is registered/ approved , the present applicant would be required strictly to abide by the statement made by learned Advocate on his behalf and whereas the present applicant, would also submit an undertaking with regard to the same before the learned trial Court within a period of one week from today.
- (h) It is further clarified that in case the present applicant does not file such an undertaking or does not abide by such undertaking whereby he would undertake to have the cancellation deed registered within a period of 30 days' of the registered sale deed being approved/registered then it would be open for the first informant and or the investigating officer to file an appropriate application before the learned Trial Court for cancellation of the present bail order;

11. Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicant to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. The applicant shall remain present before the learned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the learned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police remand. This is, however, without prejudice to the right of the accused to seek stay

against an order of remand, if ultimately granted, and the power of the learned Magistrate to consider such a request in accordance with law. It is clarified that the applicant, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

12. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the applicant on bail. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

MARY VADAKKAN

(NIKHIL S. KARIEL,J)

