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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 16338 of 2020

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FEROZE FALIBHAI CONTRACTOR

Versus

STATE OF GUJARAT

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Appearance:

MR MUHAMMAD ISA M HAKIM(10874) for the Applicant No. 1

MR. NISARG N JAIN(8807) for the Respondent(s) No. 1

MR J. K. SHAH, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE UMESH A. TRIVEDI

Date : 06/04/2021

ORAL ORDER

1. Rule. Mr.J. K. Shah, Learned APP, waives service of notice of Rule on behalf of respondent-State and Mr. Nisarg Jain waives service of notice on behalf of First informant.
2. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant-accused has prayed for anticipatory bail in connection with the FIR being C.R. No.- 11196008200983 of 2020 registered with J. P. Road, Police Station, Vadodara City for the offenses punishable under Sections 177, 181, 406, 465, 467, 471 of the Indian Penal Code and under Section 6D of the Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from premises in Disturbed Areas Act, 1991 (hereinafter referred to as 'the Act').

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3. Mr. M.T.M. Hakim, learned advocate for the applicant submitted that the FIR discloses commission of offence to be under section 6D of 'the Act'. He further submitted that the section 6D of 'the Act' came to be inserted after getting assent of the Hon'ble President and published in the Gujarat Gazette on 15.10.2020, whereas the present offence is said to have been committed between 04.05.2020 to 16.05.2020 and the FIR for the same came to be registered on 30.8.2020. Therefore, according to his submission no offence or part of any offence should have been registered under section 6D of 'the Act' against the present applicant prior to its insertion in 'the Act'. He further submitted that he is surprised how the complainant has invoked such provision, which was not there on the Statute-book and even, the police has registered the same without application of mind. He further submitted that considering the contents of the FIR, it is clear that the applicant cannot be said to have committed offence as alleged. In the nutshell, the allegations levelled against the applicant is that for getting the previous sanction for sale of immovable property owned by the applicant while making application in the affidavit annexed with the application, no religion of the applicant is mentioned therein despite of the fact that he belongs to Parsi community. It is further alleged that in the said affidavit his address of residence is shown to be Tandalja, Vadodara and thereby, he is said to have created a false document. He submitted that not only the

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alleged act, even presuming to be true, would either fall under section 6D of 'the Act' or any of the section of the Indian Penal Code. According to his submission, unless any provision of law obliges a person to mention religion even in any affidavit, non-mentioning the same would not attract any offence under any law. He further submitted that even a person, who has more than one residential addresses, mere mentioning of the address than the usual place of abode, cannot be termed as creating any false document as alleged. He submitted that the applicant is being falsely attempted to be roped into an offence not by any person aggrieved but basically by the Chairman of the society, where immovable property of the applicant is situated and he attempts to sell it after following due procedure under the law. Learned advocate, therefore, submitted that considering the above facts, the applicant may be granted anticipatory bail.

4. As against that, Mr. Nisarg Jain, learned advocate for the first informant submitted that he has shown his incomplete address other than his usual place of abode in the affidavit filed by him for the purpose of getting previous sanction to sell his immovable property. At the same time, he submitted that though he is of Parsi religion, but he has not mentioned his religion in the affidavit tendered alongwith the application for getting permission under 'the Act' and thereby, the applicant has committed an offence as mentioned in the FIR.

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5. Mr. J. K. Shah, learned APP appearing on behalf of the Respondent-State submitted that as such first informant, who appears to be the Chairman of the Society, where the immovable property of the applicant is situated must be aggrieved by the no objection certificate for sell granted by it, which was ultimately cancelled by them. He fairly submitted that so far attracting any criminal provision, as asserted, may be open to a decision at the time of either framing of charges or submitting charge-sheet before the Competent Court.
6. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicant.
7. Considering the submissions made by learned advocate for the appearing parties and with a view not to cause prejudice to any of the parties, it would be in the fitness of things not to elaborate on the submissions made by learned advocate for the applicant and to record finding thereon. However, prima facie, it appears that no law obliges to state his religion in the affidavit filed in support of application seeking previous sanction to transfer immovable property, more particularly, Mr. Hakim, learned advocate for the applicant submitted that a person is not supposed to mention his

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religion in an affidavit that might be filed by him. So far as forgery of the document is concerned, definition is very clear that any of the Act would not attract any provision thereof. Suffice it to say that the applicant has made out a case for at least an order of anticipatory bail without further delving deep into it. In the facts and circumstances of the present case, I am inclined to consider the case of the applicant.

8. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors.**, reported at [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of **Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab**, reported at (1980) 2 SCC 565.
9. In the result, the present application is allowed. The applicant is ordered to be released on bail, in the event of his arrest, in connection with an FIR being C.R. No. 11196008200983 of 2020 registered with J. P. Road Police Station, Vadodara City on his executing a personal bond of Rs.10,000/- (Rupees Ten 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 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

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such facts to the court or to any police officer;

- (c) 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;
 - (d) 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 till further orders;
 - (e) 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; and
 - (f) it would be open to the Investigating Officer to file an application for remand if he considers it proper and just and the learned Magistrate would decide it on merits;
10. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicant. 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.

11. At the trial, the concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.

Rule is made absolute to the aforesaid extent. Direct service is permitted.

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(UMESH A. TRIVEDI, J)

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