

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 4246  
of 2024****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J. C. DOSHI Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	<b>YES</b>
2	To be referred to the Reporter or not ?	<b>YES</b>
3	Whether their Lordships wish to see the fair copy of the judgment ?	<b>NO</b>
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	<b>NO</b>

SUNIL KUMUDCHANDRA RANA  
Versus  
STATE OF GUJARAT

Appearance:

MR VIRAT G POPAT(3710) for the Applicant(s) No. 1

MR SOHAM JOSHI, ADDL. PUBLIC PROSECUTOR for the Respondent

**CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI****Date : 11/03/2024****CAV ORDER**

1. By way of the present petition 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. 1 of 2024 registered with Ahmedabad City ACB Police Station.

2. The case of the prosecution is to the effect that present

applicant had been serving as Ward Inspector in Ahmedabad Municipal Corporation and upon information received and inquiry was initiated concerning wealth amassed by the present applicant and such inquiry was confined to the check period from 01.04.2010 to 31.03.2020. It is alleged that during the 10 years of the said check period, the applicant was found in possession of the wealth beyond his known source of income to the extent of 306%. It is alleged that an amount of Rs.2,75,18,223/- was found in excess of the total income, expenditure etc. of the applicant which has been quantified accordingly. In such background, an FIR for aforesaid offence is filed.

3. Heard learned advocate Mr. Virat Popat for the petitioner and learned APP.

4. Learned advocate for the petitioner would submit that in the FIR, it is alleged that the petitioner is found in possession of wealth beyond his known source of income to the extent of 306%. He would further submit that however, such finding by itself is erroneous. The petitioner is not in possession of any disproportionate assets. He would further submit that in fact, the investigating officer has not taken into consideration the amount of Rs.1,03,68,000/- received by the family members, namely, Manisha Rana, Sunil Rana, Yagni Rana and Amit Rana through bank transaction from Rohit Rana being father-in-law of the petitioner. Such income is clearly an accounted income, for which income tax return has been filed in the year 2014 and approved by the taxing authority. He would further submit that

this amount has not been considered by the investigating officer while assessing the alleged disproportionate assets of the petitioner for the check period commencing from 1.4.2010 to 31.3.2020.

4.1 Learned advocate for the petitioner would further submit that before filing of the FIR, the petitioner was called multiple times to offer explanation, however, such explanation has not been considered by the investigating officer erroneously and reached to the erroneous conclusion that the petitioner has ill-gotten wealth.

4.2 It is further submitted that the investigating officer is not justified in invoking provisions of the Prevention of Corruption Act, 1988 as amended in the year 2018 (in short “the Act”) in absence of any allegation of possession of ill-gotten wealth by the petitioner.

4.3 Learned advocate for the petitioner would further submit that section 13(1)(a) of the Act has been substituted and replaced by the explanation and is providing to presumption about intentionally enriched himself. He would further submit that the investigating officer is totally failed to adhere to the provisions. The required condition for invoking the provisions of section 13 of the Act is with regard to intentionally and enriching himself beyond known source of income. The word “intentionally” employed in the explanation is significant. The investigating officer prior to lodging the offence u/s 13(1)(a) and 13(1)(b) of the Act has to satisfy himself that the accused has

intentionally enriched himself illicitly and also has to establish said aspect. He would further submit that in the present case, by documentary evidence, it is proved that the father-in-law of the petitioner has given accounted money to the family members of the petitioner in tune of Rs.1,03,68,000/-, which was approved by the income tax department. Therefore, it is submitted that since the prosecution has prima facie failed to show that the petitioner has ill-gotten wealth and disproportionate assets and since the petitioner on all previous occasions, has extended cooperation in the investigation, the petitioner may be granted anticipatory bail.

4.4 Learned advocate for the petitioner would further submit that the petitioner is government servant and thus, there is no flight-risk. Moreover, it is submitted that the entire dispute pertains to the documentary evidence and those documentary evidence are already lying with the investigating officer. He would further submit that the investigating officer has not taken permission required u/s 17A of the Prevention of Corruption Act (Amended), 1988 for commencement of the inquiry and therefore, the inquiry/investigation against the petitioner since justified without following mandatory provision cannot be termed as legally initiated.

4.5 Upon such submission, Learned advocate for the petitioner requests to allow this petition.

5. On the other hand, learned APP takes this Court through the contents of the FIR and would submit that the petitioner was

serving as Ward Officer in cadre of Class II working in the AMC having salary of around Rs.76,600/- as on 31.3.2020 and has accumulated 306% disproportionate assets or ill-gotten wealth. He would further submit that checking period is earmarked between 1.4.2010 to 31.3.2020. He would further submit that total details of calculation of the ill-gotten wealth of the petitioner has been given in the FIR. According to same, the property of the petitioner prior to checking period was Rs.2,91,330/-, however, at the fag end of the checking period, the petitioner has got movable and immovable property to the tune of Rs.3,25,76,612/-. He would further submit that during the checking period, the petitioner has earned the income of Rs.89,89,694/- from the known source. The total expenses during the checking period is around Rs.42,22,618/-. All these aspects have been drawn by the investigating officer and come to the conclusion that the petitioner has amassed total unaccounted movable and immovable property worth Rs.2,75,18,223/-, which is 306% higher than the known source income of the petitioner. He would further submit that during the investigation, the immovable property of the petitioner worth Rs.49,66,250/- are found in addition to what already stated at earlier point of time. Therefore, huge amount has been disproportionated by the petitioner. He would further submit that the main plank of the argument of learned advocate for the petitioner is that the petitioner and his family members received accounted money of Rs.1,03,68,000/-, which is not counted by the investigating officer while reaching to the figure of disproportionate assets. Even if the said amount is considered as income from known source of the petitioner, still, huge figure

is remaining towards the ill-gotten wealth/ disproportionate assets of the petitioner and therefore, prima facie, case is made out against the petitioner. He would further submit that the calculation stated in the FIR prima facie shows that the petitioner has accumulated huge amount runs in seven figures as disproportionate assets.

5.1 Learned APP would further submit that the explanation to section 13 of the Act would rather favours the case of the prosecution. The petitioner has not satisfactorily explained for unaccounted huge amount of crores of rupees and thus, it can be said that he has intentionally enriched himself. The explanation would not help the petitioner.

5.2 As far as issue regarding permission u/s 17A of the Act is concerned, learned APP would submit that the FIR has been lodged at the fag end of the inquiry by the government officer and therefore, prima facie, bar of taking permission u/s 17A of the Act does not attract. Upon such submission, he requests to reject the petition.

6. Having heard learned advocates for the respective parties, at the outset, let foray into some of the pronouncements.

6.1 In case of Rajesh Chandulal Shah Vs. State of Gujarat reported in 2019(3) GLR 1898, this Court, after referring various judgments in regards to the ubiquity of the corruption, held in para 13 to 20, which reads as under:-

*"13. If liberty is to be denied to an accused to ensure corruption free society, then the courts should not hesitate in denying such liberty. Where overwhelming considerations in the nature aforesaid require denial of anticipatory bail, it has to be denied. It is altogether a different thing to say that once the investigation is over and charge-sheet is filed, the court may consider to grant regular bail to a public servant - accused of indulging in corruption.*

*14. Avarice is a common frailty of mankind and Robert Walpole's famous pronouncement that all men have their price, notwithstanding the unsavoury cynicism that it suggests, is not very far from truth. As far back as more than two centuries ago, it was Burke who cautioned: "Among a people generally corrupt, liberty cannot last long". In more recent years, Romain Rolland lamented that France fell because there was corruption without indignation. Corruption has, in it, very dangerous potentialities. Corruption, a word of wide connotation has, in respect of almost all the spheres of our day to day life, all the world over, the limited meaning of allowing decisions and actions to be influenced not by the rights or wrongs of a case but by the prospects of monetary gains or other selfish considerations.*

*15. If even a fraction of what was the vox pupuli about the magnitude of corruption to be true, then it would not be far removed from the truth, that it is the rampant corruption indulged in with impunity by highly placed persons that has led to economic unrest in this country. If one is asked to name one sole factor that effectively arrested the progress of our society to prosperity, undeniably it is corruption. If the society in a developing country faces a menace greater than even the one from the hired assassins to its law and order, then that is from the corrupt elements at the higher echelons of the Government and of the political parties.*

*16. In Manoj Narula v. Union of India (2014)9 SCC 1, the Supreme Court held that corruption erodes the fundamental tenets of the rule of law and quoted with approval its judgment in Niranjana Hemchandra Sashittal & Anr. v. State of Maharashtra (2013) 4 SCC 642, it was held as under:-*

*"16.....'26. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance.'*

*17. In Subramanian Swamy v. Manmohan Singh and Another (2012) 3 SCC 64, the Supreme Court held as under:-*

*"68. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular democratic republic. It cannot be disputed that where corruption begins all*

*rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision. Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption.."*

18. In *K.C. Sareen v. C.B.I., Chandigarh (2001)6 SCC 584*, the Supreme Court observed thus:-

*"12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity.."*

19. While approving the judgment of *Subramanian Swamy v. Director, Central Bureau of Investigation and Anr., (2014)8 SCC 682*, rendered by another Constitution Bench in *Manoj Narula's* case, a Constitution Bench of the Supreme Court, dealing with rampant corruption, observed as under:-

*"17. Recently, in Subramanian Swamy v. CBI (2014) 8 SCC 682, the Constitution Bench, speaking through R.M. Lodha, C.J., while declaring Section 6-A of the Delhi Special Police Establishment Act, 1946, which was inserted by Act 45 of 2003, as unconstitutional, has opined that: (SCC pp. 725-26, para 59)*

*"59. It seems to us that classification which is made in Section 6-A on the basis of status in the government service is not permissible under Article 14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the PC Act, 1988. Can there be sound differentiation between corrupt public servants based on their status- Surely not, because irrespective of their status or position, corrupt public servants are corrupters of public power. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made between public servants against whom there are allegations amounting to an offence under the PC Act, 1988." And thereafter, the larger Bench further said: : (SCC p. 726, para 60)*

*"60. Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences."*

*And again: (SCC pp. 730-31, paras 71-72)*

*"71. Office of public power cannot be the workshop of personal*



*gain. The probity in public life is of great importance. How can two public servants against whom there are allegations of corruption of graft or bribe-taking or criminal misconduct under the PC Act, 1988 can be made to be treated differently because one happens to be a junior officer and the other, a senior decision maker.*

*72. Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from equal treatment. The decisionmaking power does not segregate corrupt officers into two classes as they are common crimedoers and have to be tracked down by the same process of inquiry and investigation."*

*18. From the aforesaid authorities, it is clear as noonday that corruption has the potentiality to destroy many a progressive aspect and it has acted as the formidable enemy of the nation."*

*20. In Neera Yadav v. Central Bureau of Investigation, (2017)8 SCC 757, the Supreme Court observed thus :*

*"59. Every country feels a constant longing for good governance, righteous use of power and transparency in administration. Corruption is no longer a moral issue as it is linked with the search of wholesome governance and the society's need for reassurance that the system functions fairly, free from corruption and nepotism. Corruption has spread its tentacles almost on all the key areas of the State and it is an impediment to the growth of investment and development of the country. If the conduct of administrative authorities is righteous and duties are performed in good faith with the vigilance and awareness that they are public trustees of people's rights, the issue of lack of accountability would themselves fade into insignificance.*

*60. To state the ubiquity of corruption, we may refer to the oft-quoted words of Kautilya, which reads as under:-*

*"Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up, at least, a bit of the king's revenue. Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out (while) taking money (for themselves).*

*It is possible to mark the movements of birds flying high up in the sky; but not so is it possible to ascertain the movement of government servants of hidden purpose."*

*[Ref: Kautilya's Arthashastra by R. Shamasastri, Second Edition, Page 77]*

*As pointed out by Paul H. Douglas in his book on "Ethics of Government", "corruption was rife in British public life till a hundred years ago and in USA till the beginning of this century. Nor can it be claimed that it has been altogether eliminated anywhere."*

*(Ref: Santhanam Committee Report, 1962: Para 2.3).*

61. *Tackling corruption is going to be a priority task for the Government. The Government has been making constant efforts to deal with the problem of corruption. However, the constant legislative reforms and strict judicial actions have still not been able to completely uproot the deeply rooted evil of corruption. This is the area where the Government needs to be seen taking unrelenting, stern and uncompromising steps. Leaders should think of introducing good and effective leadership at the helm of affairs; only then benefits of liberalization and various programmes, welfare schemes and programmes would reach the masses. Lack of awareness and supine attitude of the public has all along been found to be to the advantage of the corrupt. Due to the uncontrolled spread of consumerism and fall in moral values, corruption has taken deep roots in the society. What is needed is a reawakening and recommitment to the basic values of tradition rooted in ancient and external wisdom. Unless people rise against bribery and corruption, society can never be rid of this disease. The people can collectively put off this evil by resisting corruption by any person, howsoever high he or she may be."*

6.2 The Hon'ble Apex Court in case of *State of Gujarat V/s. Mohanlal Jitamalji Porwal and Anr. (1987) 2 SCC 364*, has observed in para 26 to 28 as under:-

*"26. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of Gujarat V/s. Mohanlal Jitamalji Porwal and Anr. (1987) 2 SCC 364 this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:-*

*"5.....The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.."*

*27. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the*

*severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.*

*28. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."*

6.3 In case of *Nimmagadda Prasad Vs. CBI* reported in 2013(7) SCC 466, the Hon'ble Apex Court after reiterating to the above judgment, in para 27 observed following:-

*27. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.*

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*as a whole and thereby posing serious threat to the financial health of the country.”*

6.4. In corruption cases, the Hon'ble Apex Court poses serious concern. I may refer to the judgment in case of Sudhir Vs. State of Maharashtra and another reported in (2016) 1 SCC 146, wherein the Hon'ble Apex Court in para 10 and after considering earlier judgment reported in case of State of A.P. v. Bimal Krishna Kundu and another, (1997) 8 SCC 104, held in para 11 as under:-

*“10. The Constitution Bench in the above mentioned case, in paragraphs 16 and 17, while observing that the relief of anticipatory bail cannot be said to be barred merely for the reason that the allegations relate to economic offences or corruption, has clarified that where the allegations are malafide, the prayer for anticipatory bail can be accepted. In the present case, at this stage, there appears to be no malice on the part of Revenue Commissioner, who ordered enquiry, or Deputy Commissioner, who conducted enquiry, before getting lodged the First Information Reports against the appellants.*

*"11 We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on "the career of millions of students", learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre- arrest bail order."*

6.5. It is also worth to refer judgment in case of CBI Vs.

Santosh Karnani and another reported in 2023 Scale 6-250, the Hon'ble Apex Court observed in para 31 as under:-

*"31. The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is aptly said, "Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew that drops from thence, Hath infected some chairs and stools of authority." Hence, the need to be extra conscious."*

7. In background of above settled provisions of law qua corruption, if we look at the facts of the present case, what appears that the petitioner is Class II government officer working in AMC. Prior to checking period i.e. 1.4.2010 to 31.3.2020, he had barely movable and immovable property worth Rs.2,91,313/-. However, at the fag end of the checking period, the petitioner has got movable and immovable property to the tune of Rs.3,25,76,612/-. The income of the petitioner from the known source during the checking period is Rs.89,89,694/- and the total expenses during the checking period is around Rs.42,22,618/-. In the FIR after mathematical calculation, the investigating officer has recorded that the petitioner has accumulated disproportionate assets to the tune of Rs.2,75,18,223/-, which is 306% higher than the known source income of the petitioner. Learned advocate for the petitioner quarreled with the figure arguing that the amount of Rs.1,03,68,000/-, which the petitioner got from known source i.e. his father-in-law by way of cheque. Therefore, this cannot be implied as disproportionate assets. Even if this submission is considered to be true, there is reason to believe that huge

amount runs in seven figures is accumulated by the petitioner as ill-gotten wealth. At the same time, it is also to be considered that as per learned advocate for the petitioner, father-in-law of the petitioner has given more than one crore to family members of the petitioner, but whether it is loan or is gift or paid for some reason, is not cleared. No submission qua is made by learned advocate for the petitioner. This transaction without any explanation itself is also suspicious and mistrustful.

8. The report of the investigating officer indicates that subsequent to filing of the FIR, ill-gotten wealth, movable and immovable property of the petitioner worth Rs.49,66,250/- are also found. Learned advocate for the petitioner has failed to point out any explanation qua these huge ill-gotten wealth. Prima facie, it appears that this is an economic offence under the Corruption Act and is causing serious threat to the economic structure of the country.

9. Corruption can seep into many aspects of society, creating a ripple effect of negative consequences. It can erode trust in institutions, stifle economic growth and exacerbate social inequality. Corruption has widespread effect. It is not only effecting country's economic growth, but social and political as well. Corruption should be handled with strict hand.

10. Two other submissions were made by learned advocate for the petitioner that explanation 1 to section 13 of the Act indicates that intention should be established that accused is intentionally enriched. This submission cannot be considered at

the time deciding bail application. It is better to left for trial. It is also submitted that enquiry or inquiry in the offence is conducted without taking prior approval from the concerned authority. As such, the inquiry in the present offence is conducted by the government officer i.e. PI working in Ahmedabad City ACB Police Station. Moreover, on reading the FIR, what appears that the first informant has filed FIR on behalf of the Government. Therefore, submission of not taking permission u/s 17A of the Act would not survive, at this juncture.

11. Considering the nature and gravity of the alleged offence, whereby huge amount of crores of rupees is disproportionated by the government officer, this Court is not inclined to grant bail to the petitioner.

12. Under the circumstances, present petition fails and stands dismissed.

SHEKHAR P. BARVE

**Sd/-**  
**(J. C. DOSHI,J)**