

5. The facts giving rise to both the above proceedings are that an FIR being I-C.R. No. 33 of 2011 was registered against the appellant for offences under Sections 409, 219 and 114, IPC at the instance of respondent no.2 in the appeal arising from SLP(CrI) No. 354 of 2019. The complainant was the Mamlatdar of village Tankara at the relevant time and had lodged the FIR on behalf of the State on 12.05.2011, alleging that the government land bearing survey no.2 In short, "IPC" admeasuring 65 acres, situated at Village Anandpara was allotted to one D.J. Mehta and others on 19.05.1970 by way of Santhani for personal cultivation as per the entry made in village Form No. VI. Since the said allottees were not staying in the village and were not cultivating the land personally, the then Deputy Collector, Morbi registering the case as Sharatbhang No.40/2000, forfeited the land in favour of the Government vide order dated 15.11.2000. The said allottees in the year 2007, therefore filed an appeal before the then Collector, Rajkot (i.e. the present appellant). In the said appeal, the appellant, as the Collector, set aside the said order of the Deputy Collector and directed to restore the land in the name of the said allottees vide order dated 27.03.2008. The said order passed by the appellant was taken into revision by the Principal Secretary, Revenue (Appeals), Ahmedabad, who set aside the order of the appellant and directed to enter the name of the Government in the revenue records. According to the complainant, the appellant, who was the District Collector, Rajkot at the relevant time, had, knowing fully well that the said allottees were staying abroad and not cultivating the land as per the order of allotment, and therefore were not eligible to get back the land, set aside the order passed by the Deputy Collector, with a view to unduly favour them and that too without verifying the genuineness of the power of attorney holder, who had filed the appeal before the Principal Secretary, Revenue (Appeals) on behalf of the legal heirs of the deceased allottees, Mr. Mehta and others. Thus, the appellant acting against the interest of the Government and with a view to unduly favour the allottees, had passed the order with malicious intention, and thereby had committed the offences under Sections 409, 219 and 114 of the IPC.

6. Appellant preferred an application (R/Criminal Misc.

Application No. 7960 of 2011) under Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of the FIR on the grounds that the allegations were baseless and did not disclose any cognizable offense, and further that the complaint was malicious and was filed only because the appellant's brother was at odds with the political leaders of the area. It was further urged that the police department had been insistent upon harassing the appellant by registering multiple cases against him. It was argued that the FIR was lodged by the In short, "CrPC" Mamlatdar, acting on behalf of the State, without proper examination of the factual matrix, including the allotment of government land and its subsequent use by the allottees. The appellant contended that the alleged acts of omission or commission were done in discharge of his duties in the quasi-judicial proceedings and did not amount to criminal misconduct or breach of trust as contemplated under the penal provisions invoked.

7. The High Court, after perusing the FIR and the supporting materials, observed that the allegations pertained to a serious matter involving government land and its misuse, which prima facie disclosed commission of cognizable offences under the IPC. The High Court noted that the disputed facts, such as the cultivation of the land by the original allottees and the subsequent alleged violations, required thorough investigation and could not be adjudicated at the preliminary stage. It

was held that quashing the FIR at the nascent stage would amount to preemptively stifling a legitimate investigation into potential abuse of public resources. It was further observed that from a bare reading of the order passed by the appellant, it appears that an appeal was entertained even though it was filed with a delay of seven years, the order was passed with all the material against the allottees on record, and without verifying the bonafides of the power of attorney holder. The application seeking quashing of the FIR was thus dismissed on 12.12.2018.

8. Subsequently, the appellant approached the High Court again through R/Criminal Misc. Application No. 2367 of 2019, seeking anticipatory bail in connection with the present FIR. The appellant sought anticipatory bail primarily on the grounds that the registration of multiple cases against him is a result of malafide intent and an abuse of the legal process by the State authorities. It was contended that many of the alleged incidents took place before 2009, and despite securing bail in some cases and obtaining stays on investigation in others, fresh complaints are being lodged against him each time he is released on bail. He argued that this indicates a pattern of targeted harassment. Furthermore, he had retired from service by then, and therefore, there was no reasonable apprehension that he would engage in similar offences if granted anticipatory bail. Additionally, he asserted that the prosecution's case is primarily based on documentary evidence, and given his past cooperation with the investigating agency, custodial interrogation is unnecessary.

9. The High Court in its order dated 28.02.2019 refused to grant anticipatory bail to the appellant. It observed that serious allegations had been made against the appellant regarding his misuse of powers under the Bombay Land Revenue Code, 1879 by condoning a seven-year delay in filing an appeal and passing orders in favor of certain allottees, despite the land having been taken over by the government. Notably, the appellant had already been transferred from Rajkot to Bhavnagar at the time he issued the impugned order, which the High Court found questionable. The High Court also noted that the allottees in question were not cultivating the land and were residing abroad, casting doubt on the legitimacy of the transactions. Moreover, the appellant faced similar allegations in another case involving the allotment of government land, reinforcing the perception of misconduct. The High Court also considered the rejection of the appellant's earlier quashing petition under Section 482 CrPC and noted that, despite the appellant having filed an SLP before this Court, no interim relief had been granted in his favor. Given the prima facie case against the appellant, the number of cases registered against him, and the necessity of custodial interrogation, the Court concluded that discretionary relief under Section 438 CrPC was unwarranted.

10. The appellant has challenged both these orders in the two appeals before us.

11. We have heard shri Devadatt Kamat, learned senior counsels for the appellant and Mr. Tushar Mehta, learned Solicitor General appearing for the respondents at length.

12. The grounds taken before us in both these appeals are identical to those raised by the appellant before the High Court. Learned senior counsel for the appellant submitted that the appellant, a retired IAS officer, had passed the impugned order in his official capacity as the then District Collector, in due exercise of his quasi-judicial functions. It was contended that the FIR No. 33/2011, registered under Sections 114, 219, and 409 of the IPC, is frivolous and motivated, having been

lodged after an unexplained delay of four years. The appellant was neither entrusted with the property in question nor had dominion over it, and his decision was in accordance with the powers vested in him under the law. The High Court, while rejecting the appellant's petition under Section 482 CrPC seeking quashing of the FIR, failed to appreciate these aspects. It was further submitted that the High Court, in Special Civil Application No. 14966/2012, had previously upheld the appellant's order dated 27.03.2008, thereby reaffirming the legality of his actions. The appellant contended that the allegations of bias or malice in the exercise of his official duties are unfounded, particularly since his decision merely restored an opportunity of hearing to the affected parties. The appellant emphasized that passing an erroneous order, if at all, does not constitute a criminal offense, as otherwise, every public officer would be at risk of prosecution for performing official functions.

13. Regarding the denial of anticipatory bail, it has been argued that even if the allegations in the FIR are assumed to be true, no offence under Section 409 IPC is made out, as the appellant merely adjudicated an appeal in his official capacity. The allegations under Section 219 IPC were also unfounded, as the appellant had exercised his judicial discretion in accordance with the principles of natural justice. It was submitted that the appellant had an unblemished record of over 30 years in the civil services and was instrumental in the post- earthquake rehabilitation of Bhuj-Kutch. However, after 2010, multiple FIRs were registered against him, allegedly as a consequence of administrative decisions that did not align with the interests of the State Government.

14. The submissions made on behalf of the State of Gujarat, in both these cases, before the High Court as well as this Court are the same. It has been submitted on behalf of the State that the appellant, as a public servant, misused his position by condoning an unjustified delay of seven years in preferring the appeal and passing an order that unduly favored the allottees, despite their absence from India for over two decades. The order in question was passed on 27.03.2008, even though the appellant had already been transferred to Bhavnagar on 24.03.2008, raising concerns regarding its legitimacy. It was further contended that the appellant misappropriated government land in favor of private individuals, thereby committing criminal breach of trust under Section 405 of the IPC. Additionally, it was pointed out that two of the allottees were deceased, and their power of attorney holder had filed false verifications on their behalf, which the appellant ignored while passing the order.

15. It has been argued that the order dated 27.03.2008 was passed despite the appellant's transfer on 24.03.2008. The Deputy Collector had earlier canceled the allotment of the land after finding that the allottees were not cultivating the land and were residing abroad. The said cancellation order was challenged after seven years, and while setting it aside on the ground of violation of natural justice, the appellant also directed the authorities to mutate the allottees' names in the revenue records and hand over possession of the land, despite the government already having taken possession of it. Reference was made to an order dated 02.09.2013 passed by the High Court, which had set aside a subsequent decision of the Special Secretary (Revenue Department) and remanded the matter to the Deputy Collector for reconsideration. It was contended that, despite setting aside the Deputy Collector's order for violating natural justice, the appellant failed to remand the matter back for fresh adjudication and instead directly issued directions for handing over possession,

thereby exceeding his jurisdiction.

16. It was further pointed out that the High Court had initially granted a stay on the investigation against the appellant within 20 days of the FIR being registered. However, the quashing petition was later rejected on 12.12.2018, and following this, the investigation resumed. Thus, it would not be in the interest of justice to quash the FIR or grant anticipatory bail to the appellant at this stage. Additionally, it has been submitted that the appellant has multiple antecedents, with at least ten FIRs registered against him, including one in CID Crime, Rajkot Zone, concerning the alleged illegal allotment of 150 acres of government land. The State argued that, given the nature of allegations and the appellant's involvement in multiple similar cases, custodial interrogation was necessary, and the prayer for quashing of the FIR or for anticipatory bail should not be entertained.

17. The prayer seeking quashing of the FIR and the criminal proceedings is refused, as the allegations against the applicant involve serious allegations of misuse of official position, criminal breach of trust, and alleged corrupt practices in the discharge of public duties. The case against the applicant pertains to his passing an order that allegedly favoured private allottees despite their long absence from the country and despite his own transfer from the concerned jurisdiction. The contentions raised by the State, particularly regarding the lack of jurisdiction of the applicant at the time of passing the impugned order, the alleged collusion in disregarding the legal status of the land, and the purported misrepresentation involving deceased appellants, all indicate that the matter requires further and thorough investigation. The scope of allowing a prayer for quashing is limited and is to be exercised only in exceptional cases where it is manifestly clear that no offense is made out. However, in the present case, the FIR and the materials relied upon by the prosecution prima facie disclose the commission of cognizable offences, warranting a full-fledged investigation. Moreover, the allegations against the appellant cannot be adjudicated merely based on the pleadings and require scrutiny of official records and procedural compliance. At the stage of investigation, Courts should refrain from preemptively quashing criminal proceedings unless there is an evident abuse of process. Since the appellant's contentions relate to factual disputes that need verification through proper investigatory mechanisms, it would be inappropriate for this Court to exercise its inherent powers to quash the proceedings at this stage.

18. However, considering the nature of the allegations and the fact that the matter is to be investigated primarily based on documentary evidence, the Court is inclined to grant the relief of anticipatory bail to the appellant. The offences alleged pertain to the exercise of administrative discretion in the passing of an order rather than direct physical involvement in any overt criminal act requiring custodial interrogation. The prosecution has not demonstrated any necessity for the custodial interrogation of the appellant beyond scrutiny of official records, which can be done without placing him in detention. Additionally, the appellant has expressed his willingness to cooperate with the investigation, and no material has been placed before this Court to suggest that he has evaded or obstructed the investigation in any manner. Furthermore, it is well-settled that anticipatory bail can be granted where custodial interrogation is not essential, particularly in cases where the allegations hinge on official records and the presence of the accused can be secured without pre-trial detention. The Court also takes note of the fact that the FIR in question is part of a series of similar allegations against the appellant, and in the absence of any concrete material

indicating a likelihood of tampering with evidence or influencing witnesses, the grant of anticipatory bail is justified. Accordingly, while the appellant shall cooperate with the investigation as and when required, he shall not be taken into custody, subject to conditions imposed hereinafter to ensure his participation in the inquiry process.

19. In light of the observations made above, we do not find any merit in the appeal warranting interference with the impugned order passed by the High Court declining to quash the FIR, in question, i.e. FIR I-C.R. No. 33/2011 registered with Tankara Police Station, Rajkot (Rural). Accordingly, the appeal arising out of SLP (Crl.)No.354 of 2019 is dismissed.

20. The appeal arising out of SLP(Crl.)No.2812 of 2019 is allowed. Further, we provide that the appellant upon arrest may be released upon furnishing a personal bond of Rs.1,00,000/- (Rupees One Lakh only) to the satisfaction of the Investigating Officer in the present case, subject to following two conditions:

- i. Firstly, the appellant will extend all cooperation during the investigation; and ii. Secondly, if the Investigating Agency requires custodial investigation, it may apply to the concerned Magistrate for appropriate orders, and the said application will be considered/decided on its own merits without being influenced by any of the observations made by us.

21. Pending application(s), if any, shall stand disposed of.

.....J. (VIKRAM NATH)J. (PRASANNA B. VARALE) NEW
DELHI FEBRUARY 28, 2025