

# Nirmil Jitendrabhai Shah vs State Of Gujarat on 5 April, 2024

NEUTRA

R/CR.MA/15704/2022

CAV JUDGMENT DATED: 05/04/2024

undef

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR CANCELLATION OF BAIL) NO.  
15704 of 2022

With

R/CRIMINAL MISC.APPLICATION NO. 8424 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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

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NIRMIL JITENDRABHAI SHAH

Versus

STATE OF GUJARAT & ORS.

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Appearance in Cr.M.A.No.15704 of 2022 :

MR SHALIN MEHTA, SR. ADVOCATE WITH MR DIPEN DESAI(2481) for the  
Applicant(s) No. 1

MR BHARGAV BHATT WITH MR KISHAN R CHAKWAWALA(9846) for the  
Respondent(s) No. 2

MR BHARGAV BHATT WITH MR SIDDHARTH J DESAI(10845) for the  
Respondent(s) No. 3

MR. MANAN S DOSHI(9795) for the Respondent(s) No. 2  
MR HK PATEL, APP for the Respondent - State  
Appearance in Cr.M.A.No.8424 of 2023 :  
MR SHALIN MEHTA, SR. ADVOCATE WITH MR DIPEN DESAI(2481) for the  
Applicant(s) No. 1  
MR BHARGAV BHATT WITH MR KISHAN R CHAKWAWALA(9846) for the  
Respondent(s) No. 2  
MR ANKIT MODI for the Respondent(s) No. 2  
MR HK PATEL, APP for the Respondent(s) - State.  
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R/CR.MA/15704/2022

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 05/04/2024

CAV JUDGMENT

1. Since complainant and the accused in both the matters are same, with the consent of learned advocates for the respective parties, both the matters are decided analogously.

2. By way of filing Criminal Misc. Application No.15704 of 2022 u/s 439(2) of the Code of Criminal Procedure, 1973 (in short "the Code"), the petitioner - original complainant Nirmil Shah prays to cancel the anticipatory bail granted to accused Karan Devendrabhai Rabari and Arjun Devendrabhai Rabari in Criminal Misc. Application No.2112 of 2022 by the learned Sessions Court. Whereas, by way of filing Criminal Misc. Application No.8424 of 2023, the petitioner complainant seeks cancellation of anticipatory bail granted to accused Karan Devendrabhai Rabari in Criminal Misc. Application No.1214 of 2023 by the learned Sessions Court.

3. The above reliefs are claimed by the petitioner - complainant in background of the facts stated herein below:-

3.1. The applicant having lived in the the city for an extended period of time was looking to purchase a weekend house in the outskirts of Ahmedabad in order to spend peaceful and quality time with friends and family. Accordingly, while searching

for an appropriate property, the applicant came across a scheme namely Glade-One at Sanand, Ahmedabad, which, was being NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined developed by one of the most prominent developers of Ahmedabad. The applicant after visiting the site in person found the same to suit his requirements and accordingly, the applicant on 03.08.2018 by virtue of a Registered Sale Deed bearing No. 9336 purchased an immovable property bearing unit No. W67 admeasuring 200.29 sq. meters constructed upon a plot admeasuring 1215 sq. meters forming part of land bearing survey no. 1065/3P, 1065/7 and 1065/2 in Village Modasar, Taluka Sanand, Registration District Ahmedabad [herein after referred to as "the said property" for the sake of brevity) for a sale consideration of Rs. 1,02,72,400 (Rupees One Crore Two Lac \$Seventy-Two Thousand Four Hundred). The applicant submits that a share certificate bearing No. 448 also came to be issued to the applicant by the society which was constituted by the developer. Hence, the applicant became the absolute and exclusive owner of the said property.

3.2. Pursuant to the said property having been purchased and fully decorated and furnished to suit the requirements of the entire family, the applicant and his family members regularly began utilizing the said property.

3.3. The applicant's wife namely Mrs. Niyatii Nirmil Shah whose maiden name was Neha Shah whom the applicant had married in 1996 and who had mothered two children namely Malaika born in 1999 and Sahir born in 2002 with the applicant was suffering from acute psychological disorder more particularly known as Dissocial Personality Disorder which disabled her since 2004. On account of the aforementioned disorder, she took NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined actions and decisions which were completely and utterly unacceptable and did not suit any social standard or norms. In addition, thereto, on account of the aforementioned disorder, she resorted to meaningless and compulsive lying. Moreover, on account of the aforementioned disorder, she allegedly spent money beyond her means and in order to complete the cycle of payment allegedly ended up borrowing money from not only friends and family members but even money lenders. The aforementioned friends and family members did not charge any interest however, the money lenders charged exorbitant interest rates which apparently led her into spiraling debt trap and in order to get out of one loan, she allegedly ended up taking multiple loan. The aforementioned actions, were never within the knowledge of the applicant until the friends, family members or money lenders from whom she allegedly borrowed money under one pretext or other began approaching residence of applicant.

3.4. Furthermore, certain individuals have alleged that Mrs. Niyatii had even gone to the extent of allegedly promising them that she will secure admissions for their children in prestigious schools in exchange of donation. However, as per the claim of such parents she had no means or resources of securing such admissions and

allegedly used the money for repaying existing debts. Moreover, when the aforementioned admissions were not secured and when the aforementioned parents came to learn about her alleged falsehood, they sought refund of the amount as paid by them. However, she apparently did not have the means to pay it back and the same caused immense social embarrassment to the applicant and hence, without verifying the NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined veracity of the claim of the aforementioned individuals, the applicant shouldered the financial burden to repay the amounts as claimed by these individuals who were socially connected with the applicant.

3.5. The applicant was never party to the borrowings nor did he have knowledge about the same hence, the applicant in addition to protecting Mrs. Niyatii also intended to protect himself and his aged mother from the aforementioned money lenders who allegedly claimed to have loaned certain amount to Mrs.Niyati.

Under such circumstances, the applicant was constrained to issue a public notice in the newspapers cautioning general public about the applicant's lack of involvement in her alleged.

3.6. In addition, thereto, there were certain allegations against Mrs. Niyati that she or the intermediary with whom she was working had allegedly issued 10 fake certificates for English Speaking Language course on behalf of Trinity College, London. On the basis of such allegations, Trinity College lodged a complaint against Mrs.Niyati. However, the aforementioned complaint on account of the intervention of the applicant on account of the applicant explaining to the representatives of the complainant that Mrs.Niyati had certain psychological disorder and on account of the consent of the complainant, came to be quashed by the High Court of Gujarat. Under such circumstances, the applicant has always protected Mrs.Niyati. After birth of second child, the applicant realized that Mrs. Niyati's behaviour was not normal and all experts have associated her behaviour with psychological disorder.

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3.7. The applicant was shocked to receive a call from the administrative team of Glade One who inquired why the name of the opponent-accused-original accused persons was being reflected in the revenue record of the said property more. particularly in Village form No. 7 and 12. The applicant firstly thought it must be an error but, to be entirely sure, the applicant immediately asked the administrative team to send the document to him over WhatsApp. Accordingly, the same were sent over the applicant over WhatsApp and a perusal of the same reflected two entries: first being the entry of the sale deed as executed in favor of the applicant and second being an entry of sale of the said property in favor of the opponent-accused The applicant upon looking at the Village Forms was shocked beyond imagination since, the applicant had never made any application for mutating the revenue record for his own sale and had never entered into any transaction of sale for the said Property in favor of any entity or individual whatsoever.

3.8. However, the applicant despite having seen the revenue record as sent over WhatsApp, the applicant continued to believe that the same had to be an error and accordingly applied for a

certified copy of the sale deed which was allegedly executed in favor of the opponent- accused. The applicant upon looking at the sale deed was shocked beyond imagination since, the sale deed dated 13.12.2018 was in connection with the said property and was allegedly executed by Mrs.Niyati as the Power of Attorney of the applicant. However, in reality the applicant had never executed any Power of Attorney in favor of any entity or NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined individual not even Mrs.Niyati. Moreover, the sale deed also reflected that Mrs.Niyati had allegedly accepted a sum of Rs. 40,00,000 (Rupees Forty Lac) being the sale consideration of the said property in her own account. However, the applicant had never authorized any person not even Mrs.Niyati to accept any sale consideration in connection with the said property. Moreover, the same also reflected that the said property before Its sale was occupied by a tenant namely Dashrath Vaghela. However, such fact is absolutely incorrect since, the said property was and is continues to be absolutely owned and occupied by the applicant since its purchase by the applicant. Moreover, the Sale Deed also reflected that the applicant had executed an agreement to sell dated 14.11.2018 in connection with the said property. However, such fact is also incorrect since, the applicant has never executed any Agreement to Sell in connection with the said property in favor of any individual whatsoever.

3.9. Accordingly, the applicant immediately went home and confronted Mrs.Niyati in connection with the aforementioned transaction. In response initially Mrs.Niyati pretended not to have any knowledge about the aforementioned transaction but, after much persuasion, she shared certain details in connection with the aforementioned sale deed. From the basic details as shared by her and keeping in mind her past conduct which Is associated with her psychological disorder, it is plausible that that Mrs.Niyati was introduced to the accused persons by one Dimple Chaudhary and Pursuant to such introduction Mrs. Niyati might have entered Into some sort of financial transaction NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined with the opponent-accused. Moreover, with a view to illegally secure such transaction, Mrs.Niyati could have been compelled to give detail of the said Property to the opponent. After knowing the said property, the opponents accused seems to have forged and fabricated certain deeds and documents in connection with the said property including a Power of Attorney of the applicant for which the photographs and identity proof of the applicant and his family members that were readily accessible by Mrs. Niyati were called for by the opponent-accused, Further, It seems that Mrs.Niyati without any authority, right, title or interest was made to sign certain deeds and documents in connection with the said property Including a Sale Deed and since such fraudulent Sale Deed was drafted as the instance of the opponent-accused in Gujarati language in which Mrs.Niyati is not proficient, she seems to have been misled into believing that she was simply signing a document in order to secure the purported financial transaction as entered into by and between her and the opponent-accused. Moreover, the daughter has confirmed that she has never visited any Notary Public and hence, it seems that signature of Malaika was obtained on a blank paper and used in order to forge and fabricate a Power of Attorney which were illegally notarized in her absence. Moreover, from the facts as narrated by Mrs.Niyati it seems that the opponent- accused and Dimple Chaudhary opened two bank accounts of Mrs.Niyati one with Gujarat State Co- Operative Bank, Paldi Branch and another with Ahmedabad District Co- Operative Bank, Sharda Mandir Branch and deposited the money in such bank accounts with a view to mislead authorities and third parties into believing that the Sale Deed was genuine NEUTRAL CITATION R/CR.MA/15704/2022 CAV

JUDGMENT DATED: 05/04/2024 undefined when in reality the same was completely bogus and sham. Moreover, even the aforementioned amounts allegedly deposited into the aforementioned bank accounts were completely withdrawn by the opponent-accused and his co-conspirators as narrated in detail in the following paragraph. However, despite all the aforementioned facts and circumstances, It is absolutely clear that the applicant has never authorized any entity individual to act as his Power of Attorney in order to undertake any transaction in connection with the said property. However, from the facts that are available as on date it is evident that the sale deed executed in favor of the opponent-accused is entirely based upon a forged power of attorney and is clearly an act of fraud.

3.10. The alleged power of attorney which is given by the applicant to his wife and on the basis of which disputed sale deed is executed, contains forged and fabricated signature of the applicant. The entire transaction was nothing but fraud.

3.11. The applicant was constrained to prefer Special Civil Suit No.31 of 2022 before the learned Civil Court, Sanand. The applicant also preferred application seeking injunction and appointment of Court commissioner. The learned Trial Court by order dated 20.04.2022 was pleased to not grant any ex-parte injunction to the applicant and issued notice to the accused. The applicant challenged the order not granting ex-parte injunction to the applicant by way of Appeal from Order No.100 of 2021 before this Court seeking interim protection. During the pendency of suit and Appeal from Order, as per order of learned NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined Trial Court, accused was served with copy of notice on 23.04.2022 and was made aware of the proceedings initiated in order to protect possession of the property in question.

3.12. However, on 25.04.2022 at around 5:30 AM, the opponent- accused-accused persons with around 50 people attempted to barge into the said property and attempted to forcibly evict the applicant and his security personnel from the said property. Moreover, the opponent-accused and their associates even snatched the bag of the applicant containing some cash, the applicant's mobile charger and important documents in connection with the said property.

3.13. Under such circumstances, immediately called the police control room who sent two police officers to the said property. However, the aforementioned officers claimed that the said property was within the jurisdiction of Changodar Police Station and directed the applicant to approach Changodar Police Station to register the complaint.

3.14. The applicant filed two complaint to the police officer, on with regard to registration of offence for criminal trespass and other with regard to registration of offence of cheating and forgery. The police registered one FIR being I- C.R.No.11192015220351 of 2022 for criminal trespass and not registered FIR for cheating and forgery.

3.15. The accused preferred application under section 438 of Cr.P.C. for anticipatory bail before the Sessions Court, NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined Ahmedabad (Rural) being Cr.M.A.No.2112 of 2022. Learned Sessions Court,

Ahmedabad (Rural) vide order dated 22.07.2022 granted anticipatory bail to the respondents - accused. Hence, Criminal Misc. Application No.15704 of 2022 is preferred.

3.16. Thereafter, FSL report was received by the police which clearly indicates that alleged signature of the applicant in the power of attorney are forged and fabricated. Therefore, FIR being I-C.R.No.11192015220529 of 2022 was registered against opponent no.2 - Karan Rabari. Opponent no.2 preferred Criminal Misc. Application No.3525 of 2022 before the learned Sessions Court, Ahmedabad for anticipatory bail. Same was rejected vide order dated 14.12.2022. Opponent no.2 has not approached this Court for grant of anticipatory bail, but filed application under section 482 of Cr.P.C. seeking to quash the FIR being Special Criminal Application No.12774 of 2022, in which this Court has issued notice and no protection is granted. Thereafter, other two accused viz. Niyatiben and Hemalben Parmar got anticipatory bail. Thereafter, opponent no.2 - Karan Rabari has preferred successive bail application being Cr.M.A.No.1214 of 2023 before the learned Sessions Court, Ahmedabad and vide order dated 13.04.2023, learned Sessions Court, Ahmedabad has granted anticipatory bail to opponent no.2 - Karan Rabari. Hence, Criminal Misc. Application No.8424 of 2023 is preferred.

4. Heard learned Senior Counsel Mr. Shalin Mehta assisted by learned advocate Mr. Dipan Desai for the petitioner - complainant, learned advocate Mr. Bhargav Bhatt assisted by NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined learned advocates Mr. Kishan Chakwawala, Mr. Manan Doshi and Mr.Siddharth Desai for the respondent accused and learned APP Mr. HK Patel for the State.

5. Learned Senior Counsel Mr. Shalin Mehta appearing for the petitioner - complainant would submit that the learned court below has committed serious error in granting anticipatory bail in successive bail application. He would further submit that the learned Sessions Court had no jurisdiction to review its earlier order in absence of change of circumstances while dealing with successive bail application. He would further submit that the accused Karan Devendra Rabari had initially filed Criminal Misc. Application No.3525 of 2022, before the learned Sessions Court for getting anticipatory bail. This application came to be rejected by the learned Sessions Court on 14.12.2022. Yet within short span of three and half months, the accused Karan Devendra Rabari has filed another anticipatory bail application before the learned Sessions Court pleading that the anticipatory bail or regular bail are granted to other accused involved in the offence and therefore, on the ground of doctrine of parity successive bail application is maintainable. He would further submit that the learned sessions judge has also erred in believing that there was a change of circumstances as some other accused have been subsequently admitted to bail. He would further submit that merely granting of bail to some other accused cannot be considered as change of circumstances. The successive bail application in these circumstances was not less than the application to review its earlier order. He would further submit that the order passed in Criminal Misc. Application No.3525 of NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined 2022 denying the anticipatory bail has not been challenged before the High Court by accused Karan Devendra Rabari and yet, the learned Sessions Judge has reviewed its earlier order and granted anticipatory bail, principally on applying doctrine of parity to the accused and thereby, the learned Sessions Judge has committed serious error in granting

anticipatory bail.

5.1. Learned Senior Counsel Mr. Shalin Mehta, referring to judgment in case of GR Ananda Babu vs. State of Tamilnadu reported in 2021(16) SCC 725 to contend that in absence of change of circumstances, the court should restrain itself from entertaining the successive anticipatory bail application. He would refer following observations made by the Hon'ble Apex Court :-

"7. As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No. 2) is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge."

5.2. Another judgment, which pressed into service by the learned Senior Counsel Mr. Shalin Mehta is the judgment of the Hon'ble Apex Court in case of Mohammed Shamim Khan Vs. State of Jharkhand rendered in SLP (Cr.) No.9449 of 2021 to contend the same submission.

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5.3. Yet, another judgment which pressed into service is in case of M/s Gati Limited versus T Nagarajan and others rendered in Criminal Appeal No.870 of 2019.

5.4. Learned Senior Counsel Mr. Shalin Mehta would further submit that a typical modus operandi has been adopted in the present case. The accused Karan Devendra Rabari has preferred anticipatory bail application but did not succeed in getting the same. He did not choose to challenge the same order before the High Court, but waited for the other accused to get the bail. Once other accused got the bail, he again approached the court below on the ground of parity and filed successive bail application and got the anticipatory bail, but entertaining of successive bail application itself under typical modus operandi is not less than entertaining the successive application without having any change of circumstances. He would further submit that role of the accused was totally examined when the first anticipatory application was rejected by the concerned Court, but in successive bail application ignoring this aspect, learned Sessions Court has granted anticipatory bail on the ground that other accused have been given bail. He would further submit that once role of the accused in the offence is examined and anticipatory bail was rejected, that decision cannot be reviewed and changed on aspect that co-accused have been granted bail subsequently. Therefore, principle of parity could not apply, but the learned sessions judge has erred applying same in granting the anticipatory bail.

5.5. Taking this court through the facts of the case, learned NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined Senior Counsel Mr. Shalin Mehta submitted that the immovable property which was purchased by the petitioner for value of more than 1,00,00,000 on 3.8.2018 is seize hold of by the accused 1,00,00,000 on 3.8.2018 is seize hold of by the accused Karan Devendra Rabari, taking advantage of the unfit to take decision condition of the wife of the petitioner by forging the power of attorney of the petitioner



- complainant, at the meager amount of 1,00,00,000 on 3.8.2018 is seized hold of by the accused 40 lakhs. This deed was executed on 18.12.2018, precisely four months after the petitioner - complainant has purchased the property at 1,00,00,000 on 3.8.2018 is seized hold of by the accused 1,02,72,400. The mental condition of the petitioner wife is disturbed. The accused has lent some money and then forged the power of attorney of the petitioner - complainant and got executed the sale deed in his favour which prima facie indicates that the respondent / accused are involved in the commission of the offence of sections 465, 467, 468, 471, 120B of the IPC. He would further submit that the immovable properties located in prime location have been a persistent issue involved in fraudulent practice and illegal activity related to taking away immovable property where it is witnessed that a scammer offered concocted and fake land title, forged sale deed etc. The present case is part of such persisting issue. Referring to the judgment of Pratibha Manchanda and another Vs. State of Haryana and another reported in (2023) 8 SCC 181, learned Senior Counsel, Mr. Shalin Mehta would submit that scammer should not be given extraordinary relief of anticipatory bail. Para 16, 17, 18, 19 and 25 of the judgment are referred, which reads as under:-

"16. It goes without saying that the alleged offences of forging documents for transferring ownership of land worth crores of rupees are grave in nature. Hence, while it is extremely important to protect the personal liberty of a person, it is equally incumbent upon us to analyze the seriousness of the offence and determine if NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined there is a need for custodial interrogation.

17. In Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 this Court carefully considered the principles established by the Constitution Bench in Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 case. After a thorough deliberation, this court arrived at the following conclusion:

"112. The following factors and parameters can be taken into consideration while dealing with anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail, particularly in cases of large magnitude affecting a very large number of people.

18. In *Sushila Aggarwal v. State (NCT of Delhi)*, (2018) 7 SCC 731 the Constitution Bench reaffirmed that when considering applications for anticipatory bail, courts should consider factors such as the nature and gravity of the offences, the role attributed to the applicant, and the specific facts of the case.

19. The relief of Anticipatory Bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome.

25. Land scams in India have been a persistent issue, involving fraudulent practices and illegal activities related to land acquisition, ownership, and transactions. Scammers often create fake land titles, forge sale deeds, or manipulate land records to show false ownership or an encumbrance-free status. Organized criminal networks often plan and execute these intricate scams, exploiting vulnerable individuals and communities, and resorting to intimidation or threats to force them to vacate their properties.

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These land scams not only result in financial losses for individuals and investors but also disrupt development projects, erode public trust, and hinder socio-economic progress."

5.6. Learned senior Counsel, Mr. Shalin Mehta would submit that another typical modus operandi adopted by the accused is to get away from the criminal prosecution, shelter of the civil litigation, filed between the parties has been taken. He would further submit that in given set of facts, civil wrong, as well as criminal offences may also arise and in the given facts and circumstances, only because the parties have also resorted to civil remedy or civil remedy may be available to the party by itself cannot be considered as ground to grant anticipatory bail and that too in successive anticipatory bail application. He would further submit that in these circumstances, the court is required to adopt real test principle to find out that whether any complaint discloses the criminal offence or not. In support of his submission, learned Senior Counsel, Mr. Shalin Mehta has referred to and relied upon the judgment in case of *Vesa Holdings Pvt. Ltd. Vs. State of Kerala* reported in 2015(8) SCC 293, more particularly, para 9 thereof, which reads as under:-

"9. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the

allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings."

5.7. In addition to above learned Senior Counsel, Mr. Shalin Mehta would submit that the present petitioner is 'absconding' that is what exactly observed by the coordinate bench in order of Criminal Misc. Application No.15574 of 2023 and further contended that in a Criminal Case No.3438 of 2023, which is a subject matter of Criminal Misc. Application No.15704 of 2023, the concerned trial court has issued non-bailable warrant against the accused under section 70 of the Cr.P.C., which by itself indicates that the accused is running away and has misused personal liberty. It is submitted that accused is continuously involved in the offence. Another FIR being C.R.No. 11191048230463 of 2023 is registered with Sarkhej Police Station for the offence under sections 406, 420, 465, 467, 468, 471 and 120(B) of IPC against the respondent accused. Anticipatory bail asked in said offence is rejected by Co-ordinate Bench. So it indicates that the accused is absconding and is not extending any help in investigating the offence. It is submitted to allow the petition and to cancel the anticipatory bail granted to the accused.

5.8. Lastly, it is submitted by learned Senior Counsel, Mr. Shalin Mehta that the learned trial court while granting anticipatory bail to the accused has ignored the antecedents registered against the accused. There are multiple antecedents registered against the accused. However, no discussion about the antecedents are made in the impugned orders by the learned trial court and therefore, the impugned orders passed by the NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined learned trial court are erroneous, unjust and against the settled principles of law and requires to be set aside.

5.9. In addition to the above judgments, learned Senior Counsel, Mr. Shalin Mehta also referred to and relied upon following judgments to buttress his submission.

1. Ganesh Raj Vs. State of Rajasthan of Rajasthan High Court reported in 2005 CrLJ 2086 (FB)
2. Kerala High Court judgment in case of Bipin Sunny Vs State of Kerala reported in 2023 SCC Online Ker 5570
3. Gujarat High Court judgment in case of Arun Ghisalal Verma vs. State of Gujarat reported in 2011 SCC Online Guj 6224

4. Ravindrakumar Madhanlal Goenka Vs. Rugmini Ram Raghav Spinners Pvt. Ltd. reported in 2009(11) SCC 529

5. Secundrabad Club Etc. Vs. CIT v ETC reported in 2023(0) JX (SC) 774

6. Oriental Insurance Co. Ltd. Vs. Meena Variyal reported in 2007(5) SCC 428.

6. On the other hand, learned advocate Mr. Bhargav Bhatt appearing for the respondent accused would submit that the present petitions are filed to settle the personal score. He would further submit that the complainant who is running behind the accused at every stage has filed this petitions with oblique motive. He would further submit that the complainant who has failed to achieve anything in his favour in a civil suit, by way of this criminal proceedings, he is trying to explore the possibility to achieve his purpose. He would further submit that along with NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined multiple FIR, the complainant has also filed civil suit No.31 of 2022 for the disputed property on 20.4.2022. The concerned civil court has issued notice, the same has been challenged by way of AO before this court being No.100 of 2022. The court commission was undertaken and according to which the accused were found in possession of the disputed property. This report has been taken on record and subsequently the court has passed the status quo order below Exh.12 in the civil suit. The order of the status quo is also challenged by way of AO No.107 of 2022 before this court, but in the same matter or in the earlier AO, the complainant has failed to get anything in his favour.

6.1. Learned advocate Mr. Bhargav Bhatt would submit that two civil suits being Nos.208 of 2022 and 209 of 2022 for the property situated at Makarba were filed by the accused and they are also pending. Subsequently, FIR being I- C.R.No.1119201520351 of 2022 came to be filed. He would further submit that another application was filed in the civil suit at Exh.31 being restoration application. He would further submit that the petitioner failed to get any relief in either of the applications in Civil Suit in his favour. Meanwhile, anticipatory bail application was filed but it was decided against the accused. But when the bail was granted to the wife of the petitioner, the same has called as a base and parity for filing second successive application before the learned sessions judge and which came to be allowed. Learned advocate Mr.Bhatt thus submitted that no error has been committed by learned Sessions Judge. It was change of circumstances, which rightly has been considered by the learned Sessions Court. For the said proposition, he has referred to and relied upon judgment in case of Babu Singh Vs. NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined the State of U.P. reported in 1978 AIR SC 527. He would further submit that the learned judge has not committed any illegality in granting anticipatory bail to the accused in successive bail application.

6.2. Learned advocate Mr. Bhargav Bhatt would submit that the FIR is designed against the accused. Though the wife of the petitioner, complainant was the main culprit, she was not joined in the FIR, but later on, she was joined by the police during the investigation. The wife of the petitioner was the main culprit, and yet she had been given the bail by the court and therefore on the ground of parity, and considering the change of circumstances, successive bail application was moved by the accused and it was rightly granted by the learned Sessions Court. In so far as principle of parity to be

extended to the co-accused is concerned, learned advocate, Mr. Bhargav Bhatt referred and relied upon judgment of this court in case of Rameshbhai Dhobi Vs. State of Gujarat rendered in Criminal Misc. Application No.1475 of 2011; in case of Somabhai Nadoda Vs. State of Gujarat rendered in Criminal Misc. Application No.647 of 2021 and other allied matters, so also in case of Vikram Gautam Vs State of Gujarat delivered in Criminal Misc. Application No.22437 of 2017. He would further submit that on perusal of the order, it indicates that the learned sessions court has applied the principle of parity as the other co-accused has got the regular or anticipatory bail in the offence, and in this changed circumstances, the accused has also applied for anticipatory bail and got it. No illegality or irrelevant aspect surface on record. No error has been committed by learned Sessions Court. Successive bail application on the ground of parity was maintainable and can be NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined allowed as well. They are tenable grounds.

6.3. Learned advocate Mr. Bhargav Bhatt would submit that there is no absolute bar in filing the successive bail applications as principle of res judicata does not attract in the matter of bail applications. Referring to the judgment of the Hon'ble Apex Court in case of Rani Dubeja v/s. State of Haryana rendered in Criminal Appeal No.615 of 2017, learned advocate Mr Bhargav would submit that on changed circumstances, when another application under section 438 of the Code is filed, the court should consider the same on merits. The principle of res judicata could not and should not be attracted in application for bail.

6.4. Learned advocate Mr. Bhargav Bhatt would submit that considering the entire record of the case, it appears that the complainant in connivance with the police officer is running behind the accused. The accused who has been enlarged on anticipatory bail by the impugned orders, was subjected to the police remand, as has been granted by the learned trial court and modified by this court, was beaten mercilessly during the remand proceedings; his bones were broken. A complaint was also filed in this regard and inquiry is initiated. He would further submit that the complainant as well as the police officers are behind the accused and at any cost, they want accused behind bar. He would further submit that the personal liberty of the accused is sacrosanct He would further submit that article 21 of the Constitution of India envelope that no person shall be deprived of his right or personal liberty, except according to the procedure established by law. Referring to the judgment of the Hon'ble Apex Court in case of Sundeep Kumar Bafna Vs. State of NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined Maharashtra [2014 (16) SCC 623], learned advocate Mr. Bhatt would submit that personal liberty of the accused is to be countenanced. Rerunning his argument learned advocate Mr.Bhatt would submit that complainant who failed to achieve his purpose in civil litigation or even during police remand, intends to carry off by putting personal liberty of the accused at stake and peril.

6.5. Another submission canvassed by learned advocate Mr. Bhargav Bhatt is that the Court is legally restrained from appreciating the evidence considered by the Court below while granting the anticipatory bail. He would further submit that cancellation of bail is a harsh order, because it deals and takes away the liberty of an individual who has been granted bail. He would further submit that rejecting the bail at the first instance is one aspect and cancelling the bail is a different aspect. A person seeking relief of cancellation of bail has to establish that the order granting bail is totally

unjustified, illegal, perverse and against the settled principles of law. In this proposition, he has referred to the judgment in case of Qatar Chemical And Petrochemical Marketing And Distribution Company (MUNTAJAT) Qjsc Vs. State of Gujarat rendered in Criminal Misc. Application No 25240 of 2017, more particularly, para 20, 24 and 27 thereof.

6.6. Learned advocate Mr Bhargav Bhatt would submit that in the present case, civil dispute has been given cloak of the criminal litigation. Both the parties have resorted to civil litigation prior in point of time that is before filing of the FIR. Once the petitioner complainant failed to get any relief in the NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined civil matter in his favour, he has resorted to the criminal litigation. Referring to the judgment in case of R. Nagender Yadav Vs. the State of Telangana reported in 2022 Livelaw (SC) 1030, he contended that when the dispute is of civil nature and given the colour of criminal offence, the court should quash the criminal proceedings to prevent the abuse of process of law. He would further submit that the complaint filed against the present respondent is not less than the abuse of process of law. Therefore, he submitted that considering that aspect successive anticipatory bail application rightly has been granted by the learned trial Court. It is just and correct order and should not be disturbed by this court.

6.7. Learned advocate Mr. Bhargav Bhatt would submit that the complainant who is mastermind behind the entire litigation, saved his daughter and wife firstly and got the orders in their favour and now contend that the wife is unfit to take decision and put burden on the accused, alleging that the accused have forged the power of attorney of the petitioner / complainant and brand them as main culprit. He would further submit that the petitioner has elected to cancel the bail of the present petitioner only, he has not chosen to file cancellation of bail against his wife or daughter. Thus, it appears that the petitioner complainant has adopted pick and choose policy to pressurise the accused to settle the issue.

6.8. Learned advocate Mr Bhargav Bhatt would submit that when the anticipatory bail was granted to the petitioner, no NBW was issued against the petitioner and therefore issue of NBW subsequent thereto cannot be countenanced to decide the NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined legality or validity of the bail granted to the accused. Therefore, he submits that there is no substance in the argument that NBW was issued against the accused and the accused were absconding could not be granted anticipatory bail. He would further submit that the accused has already undergone custodial interrogation as police remand was given by the court below after he was released on anticipatory bail and therefore there is no need to again interrogate the accused in custody or the custodial integration is not required.

6.9. Lastly, learned advocate Mr. Bhargav Bhatt would submit that no court has declared the accused as absconding and therefore, merely issuance of the non-bailable warrant could not in any way favour the petitioner complainant to seek to cancel the bail of the accused.

6.10. Upon above submissions, learned advocate, Mr Bhargav Bhatt requests to dismiss these petitions.

6.11. Learned advocate Mr.Bhatt has relied upon following authorities in support of his submissions.

(i) Rameshbhai Batukbhai Dabhi v/s. State of Gujarat [Criminal Misc. Application No.1475 of 2011].

(ii) Somabhai Devabhai Nadoda (Kher) v/s. State of Gujarat [Criminal Misc. Application No.647 of 2021].

(iii) Vikram Anil Gautam v/s. State of Gujarat [Criminal Misc. Application No.22437 of 2017]

(iv) Rani Dudeja v/s. State of Harayana [Criminal Appeal No.615 of 2017 - Hon'ble Supreme Court] NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined

(v) Babusingh v/s. State of UP [1978 AIR 527]

(vi) State of Madhya Pradesh v/s. Kajad [AIR 2001 SC 3317]

(vii) R. Nagendra Yadav v/s. State of Telengana [2022 LiveLaw (SC) 1030]

(viii) Ravindra Saxsena v/s.State of Rajasthan [Criminal Appeal No.2406 of 2009 - Hon'ble Supreme Court]

(ix) Jagmohan Bahl v/s. State (NCT of Delhi [Criminal Appeal No.2335 of 2014 - Hon'ble Supreme Court]

(x) M.Jagmohan Rao v/s. P.V.Mohan Rao [Special Leave to Appeal (Criminal) No.872 of 2005]

(xi) Sundeep Kumar Bafna v/s. State of Maharashtra [2014 (16) SCC 623]

(xii) Sunder Rajendra Sumbiyah v/s. State of Gujarat [Criminal Misc. Application No.21505 of 2023]

7. Underscoring the submissions made by learned Senior Counsel Mr Shalin Mehta, learned APP appearing for the State submit that the accused has made wild but baseless allegation against the police to achieve his purpose. He would further submit that upon wild and baseless allegations levelled by the accused against police officer, criminal inquiry is initiated by learned Court below. Upon the order of the Court below, the police has conducted inquiry and collected the evidence and placed it before the court to contend that there is no substance in the allegation levelled against the police officers. He would further submit that in the enquiry proceedings, the respondent accused is not remaining present to proceed further. So it is the routine of the accused that whenever he is arrested, he is making such type of allegation to prevent the police machinery NEUTRAL CITATION

R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined from investigating the offence in its true perspective. The accused is habitual in commission of the offence. There are multiple offences registered against the accused. He would further submit that in the present case there is concrete evidence on record. The FSL report indicates that the signature of the petitioner / complainant on the power of attorney is not belonging to the him but it is a forged one.

7.1. Learned APP would submit that, if fact of the case is taken, immovable property being bungalow, valued for more than Rs.1 Crore purchased by complainant has been taken away by the accused, forging signature of the complainant on power of attorney, taking advantage of unfit condition of the wife of complainant to take decision. Accused has lent some money and than at meager price of Rs.40 lakhs has taken away bunglow by executing sale deed upon forged power of attorney. He would further submit that complainant had purchased bunglow three to four months back at price of more than Rs. 1 Crore, but it is carried off at price of Rs.40 lakhs. Learned APP also placed on record the report given by the Changodar Police Station to contend that the accused is running away and therefore NBW has been issued by the court below against the accused. Upon such submissions, learned APP submits to allow these petitions and to cancel anticipatory bail granted to the accused.

8. Having heard learned advocates for all the parties, at the outset, the first question that requires to be considered is whether the second successive anticipatory bail application after rejection of first is maintainable or not.

NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined

9. It is to be understood that power to grant anticipatory bail does not flow from Article 21 of the Constitution of India, but conferred by the Statute enacted by the Parliament by making in Code of Criminal Procedure, 1973 and by enacting special law may take it away also. Section 438 of Cr.P.C. was not existing but later on Parliament has introduced it, by enactment. The Law Commission in its 48th report observed thus:-

"31. The Bill introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the previous Commission (41st Report). We agree that this would be a useful addition, though we must add that it is in very exceptional cases that such a power should be exercised."

10. It is thus evident that the Law Commission intended that the provisions of anticipatory bail should not be put to abuse at the instance of unscrupulous petitioners and this extraordinary remedy has to be resorted to only in exceptional cases.

11. At this juncture, let refer section 438 of the Code.

"[(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he



shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely: -

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer- in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application. (1A) Where the Court grants an interim order under sub-

section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court. (1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.] (2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including -

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
- (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
- (iii) a condition that the person shall not leave India without the previous permission of the Court;
- (iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined 174 "(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code."

12. A close look to Section 438 Cr. P.C. demonstrates that grant of anticipatory bail is a matter of judicial discretion and the court must be satisfied that a fit case had been made out by accused for exercise of such discretion. The court has to make an effort to strike a balance between the individual's right to personal freedom and the investigational rights of the police. The provisions of Section 438 Cr. P.C. are not to be applied mechanically. The phraseology "if it thinks fit" available in the body of the section reading with section 438(2) of the Cr.P.C. is indicative enough that such order on the face of it must show the reasons for granting anticipatory bail.

13. From the language of Section 438 of Cr.P.C., it becomes explicitly clear that the Legislature intended to bring 'anticipatory bail' within the category of 'bail'. There is no substantial difference between Section 438 and 439, as regards the appreciation of the case as to whether or not a bail is to be granted. The only distinction is that in a case under Section 438, the person who approaches the court apprehends that he may be arrested without any basis whereas under Section 439, such person approaches the court after his arrest. As stated herein above, the power to grant anticipatory bail does not flow from Article 21 of the Constitution but it has been conferred by the statute enacted by the Parliament. If bail application of the accused under Section 439 is dismissed once he can move NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined successive bail application if there is a substantial change in factual situation between the earlier bail application and the subsequent one, but successive bail application on the basis of new arguments and new twists on same facts and facade should not be encouraged. Section 438 of Cr.P.C. does not presuppose any change in this legal situation and once application under Section 438 is denuded and pre-arrest bail is denied to the accused, he is not at liberty to successive bail applications except pleading and establishing change of circumstances.

14. All above discussion would lead to conclude that change of circumstances, which is substantial in nature must be pleaded and established by the accused before filing the successive bail application. Mere cosmetic change would not permit to file successive anticipatory bail application. Discovery of new fact, which was not available at the time of earlier application has to be put in place and to be demonstrate.

15. This Court in case of Arun Ghisalal Verma (supra), has discussed and examined the ground of alleged change of circumstances. This Court after examining the issue, carved out the position to extend the successive bail application stating that change in fact situation or in law could be termed

as change of circumstances. The change should be such which would require that earlier view needs to be interfered or where the earlier view has become obsolete. The change has to be substantial and must have direct impact on the earlier decision. It should not be cosmetic change. The successive application cannot have the same grounds. The relevant paras of the judgments are reproduced as under:-

NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined "8.2 Hence, it is necessary to first of all deal with the submissions based on the ground of alleged "change in circumstances.

8.3 8.3 Before considering the submission, it would be appropriate to take note of and to keep in focus that for maintaining a successive bail application what is necessary, as observed by the Apex Court, is "substantive change" and not mere "cosmetic change" or "peripheral change" in the erstwhile circumstances and that the change ought to be such which would have "impact on the previous decision."

In the decision in the case of State of Madhya Pradesh v. Kajad [2001 (7) SC 673], the Apex Court has observed that:-

".....successive bail applications are permissible under the changed circumstances. But without the change in the circumstances the second application would be deemed to be seeking review of the earlier Judgment which is not permissible under Criminal Law..... "

The Apex Court has further explained the concept of "change in circumstance" in the case of Kalyan Chanrda Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr. [2005 (3) GLH 601] and the Apex Court has observed and held that:-

"19. .... Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view the guaranty conferred on a person under Article 21 of the Constitution of India, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by courts earlier including the Apex Court of the country."

Thus, the position which emerges from the decisions is that to maintain successive bail application, there must be,

(a) change in fact situation or in law; (

- b) the change should be such which would require that the earlier view need to be interfered with. (
- c) or when the earlier view has become absolute. (
- d) the change must be substantial and must have direct impact on the earlier decision.
- (e) and should not be merely cosmetic change of little or no consequence.
- (f) successive application cannot be filed on the same ground on which the previous application/s were rejected/withdrawn.

NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined

16. The judgment in case of GR Ananda Babu (supra) also subscribe the view that if there is change of circumstances, the second successive bail application is maintainable. However, the Court can guard its wisdom while entertaining the successive bail application that the specious reason of change of circumstances cannot be permitted to invoke in successive anticipatory bail as earlier one is rejected by speaking order and considering merit as well as appreciating role of the accused.

17. Full Bench of Rajasthan High Court in the case of Ganesh Raj v/s. State of Rajasthan [2005 SCC Online Raj 319] has also addressed the issue of maintainability of 2 nd successive bail application under section 438 of Cr.P.C. Full Bench of Rajasthan High Court after examining plethora of judgments including judgment of Hon'ble Apex Court in the case of Gurubaksh Singh sibia v/s. State of Punjab [(1980) 2 SCC 565] as well judgment of in the case of Kalyan Chandra Sarkar v/s. Rajesh Ranaj @ Pappu Yadav (2005 (3) GLH 601] held in para 25 as under :-

"25. In the ultimate analysis, placing reliance on the ratio indicated in Kalyan Chandra Sarkar's case (supra), we hold that second or subsequent bail application under Section 438 Cr.P.C. can be filed if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Second or subsequent anticipatory bail application shall not be entertained on the ground of new circumstances, further developments, different considerations, some more details, new documents or illness of the accused. Under no circumstances the second NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined or successive anticipatory bail application shall be entertained by the Section Judge/Additional Sessions Judge."

18. Coming back to the case on hand, it is undisputed that respondent accused filed Criminal Misc. Application No.3725 of 2022 at first point of time under section 438 of Cr.P.C. seeking anticipatory bail. Concerned Sessions Judge examined merits and de-merits canvassed before him and also examined role of the respondent accused in commission of offence to reject anticipatory bail application. Relevant observations of learned Sessions Judge in para 5 reads as under :- (page

no.221) "5. I have heard Ld. Advocates appearing on behalf of the respective parties. I have perused the complaint, affidavit filed by the investigating officer at Exh.5, written objections filed on behalf of original complainant and available material on record. Looking to the facts and circumstances of the case and considering entire materials on record, it appears that in order to gain monetary benefit, the present applicant accused in connivance with the coaccused persons prepared a forged power of attorney of the complainant and on the basis of the forged power of attorney they executed a registered sale deed in favour of present applicant - accused and thereby, tried to grab the valuable property of the complainant. Looking to the entire evidence available on record, it is revealed that the power of attorney on the basis of which sale deed was executed does not bear the signature of the complainant. Thus, prima facie involvement of the applicant accused in the alleged offence cannot be denied. Looking to the affidavit filed by the IO, it is also revealed that investigation of the present offence is still in progress and more accused persons are yet to be arrested. It is also revealed from the affidavit filed by the IO that apart from the present offence, the applicant accused is also involved any other criminal cases which are registered against him NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined at different police stations of Ahmedabad and Gandhinagar, which shows that the applicant accused does not have clear antecedents. Further, looking records, it transpires that a detailed investigation is required to unearth the whole conspiracy and hence, presence of applicant accused is required at various occasions by the investigating officer. Moreover, this Court is in complete agreement with the submission made by the Ld. PP that if the applicant accused is released on bail at this stage, then it might affect the case of the prosecution."

19. Above order came to be passed on 14.12.2022. This order is not carried to challenge before the High Court, thereby findings arrived at by the learned Sessions Judge rejecting bail application has been accepted by the respondent - accused. Then on 05.04.2023, respondent accused has filed 2 nd successive bail application for anticipatory bail being Cr.M.A.No.1214 of 2023 under section 438 of Cr.P.C. before the learned Sessions Judge, Ahmedabad (Rural). Contention raised therein was that there was change of circumstances. Change of circumstances which are pleaded for getting anticipatory bail in subsequent bail application is coming from argument of learned advocate for the respondent accused which is recorded by learned Sessions Judge in para 3 of the impugned order dated 13.04.2023. It is in Gujarati, but for better understanding it is translated in English, which reads as under :-

"(3) Advocate Mr. V. P. Barot for applicant/accused has mainly argued that this anticipatory bail application is preferred after change of circumstances. Earlier anticipatory bail application preferred vide CRMA No. 3525/2022 has been rejected. Change of circumstance is that as per the FIR, the incident occurred on 05/12/2018 NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined and complaint was registered on 17/10/2022, which shows delay. Moreover, the daughter of the complainant has made signature as 'witness' in bogus power of attorney. Selling is done to the applicant on the basis of this power of attorney. The complainant has not shown the applicant as the accused wherein forged signature of his wife was made. The daughter had made signature as 'witness' and applicant was also not mentioned as the accused therein. The complainant has

not arrived with clean hands. Investigation was being conducted by SIT.

Approval has been given by passing order that notice be issued to the applicant for seven days from 21/03/2022. Annexure-C, reports of page no.13 are produced as documentary evidences. As Dimpleben had made signature as 'witness' in deed, she was arrested and charge-sheet has been filed. Investigation in this case is over. The Investigating Officer has all documentary evidences. Custodial investigation is not required now. Mr. Nirmil Jitendra Shah - husband of the complainant has mentioned in the statement that signature of the daughter of the complainant on Annexure-E, Page No. 19 is genuine. Moreover, the applicant does not under the offence covered by Section-465. Section-467 is not used correctly. As the action was bona-fide, it is not covered under the offence. Affidavit of the complainant is submitted for the quashing petition of the daughter of the complainant. The Hon'ble High Court on page no. 25 - Annexure - G states that "complaint can be termed as abuse of process of law." Hence, it can said that there is change in the circumstances. Anticipatory bail has been granted to the wife of the complainant. She has played major role. She has prepared bogus deed. Judgements of Ramesh Batuk Dabhi v/s State of Gujarat and Vikram Gautam v/s State of Gujarat have been produced in this case. Anticipatory bail of Hemal Kishanbhai Parmar has been granted, who has acted as 'identified by me' before the Notary during execution of bogus power of attorney. Moreover, anticipatory bail application has been rejected in CRMA No. 3525/2022 and no appeal has been preferred in Hon'ble High Court against the same. In the affidavit filed by the Investigating Officer, past criminal history has been mentioned, however in earlier two matters, FIRs have been quashed by the Hon'ble High Court. It is not the case that NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined signature was made. Therefore, it is requested to allow anticipatory bail application. It is also mentioned that they are willing to comply with whatever condition that may be laid down by the Hon'ble Court."

20. Looking to the above arguments noted by learned Sessions Judge in impugned order, it seems that various contentions are raised by the respondent accused regarding merits of the case including one that wife of the complainant has got anticipatory bail and therefore, there is change of circumstances. It was also contended that wife of the complainant has played major role in commission of offence and since she has been admitted to bail in view of judgment in the case of Ramesh Dabhi and Vikram Anil Gautam (supra) principle of parity applies. While contesting bail application, prosecution has taken stand that there are as many as 4 antecedent registered against the accused in Changodar, Vastrapur and Adalaj Police Station. It is also stated by the prosecution that role of the respondent - accused is much larger in conspiracy in commission of offence and therefore, principle of parity would not apply in successive bail application. Learned Sessions Judge after recording arguments of both the sides reached to conclusion to grant anticipatory bail by assigning reasons in para -6, which is in Gujarati. For better understanding, it is translated in English and reads as under :-

"(6) Considering the arguments, relevant record and investigation papers, it is found that this is successive anticipatory bail application. Earlier, anticipatory bail application of the applicant/ accused being CRMA No. 3525/2022 was rejected by the connected Sessions Court on 14/12/2022. However, thereafter change in

circumstance is that co-accused Smt. Niyati Nirmal Shah NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined has been released on anticipatory bail by Hon'ble High Court of Gujarat on 13/02/2023 in CRMA No. 23754/2022. In the same way, co-accused Hemal Kishanbhai Parmar has been released on anticipatory bail by the Hon'ble High Court of Gujarat on 23/0/2023 in CRMA No. 21127/2022 and similarly, co-accused Dimpleben Ashokkumar Chaudhari has been released on anticipatory bail by the Hon'ble High Court of Gujarat on 01/03/2023 in CRMA No. 320/2023. Co-accused Smt. Niyati Nirmal Shah is the person who executed Sale Deed using said power of attorney and the present applicant/accused is the purchaser. Thus, looking to the involvement and role of the present applicant/accused in the so-called offence and considering the fact that other co-

accused have been released on anticipatory and regular bail by the Hon'ble High Court of Gujarat and as it is found that it is just and appropriate to give benefit of parity to the applicant/ accused as per the principles established in the judgement of the Hon'ble High Court of Gujarat in Ramesh Batukbhai Dabhi versus State of Gujarat, published in 2011(3) GLR 1999 and in the judgement of Hon'ble High Court of Gujarat in Vikram Anil Gautam versus State of Gujarat given in CRMA No. 22437/2017 on 08/09/2017 and moreover, as the Investigating Officer has not submitted any evidence as to at what stage the crime mentioned in the criminal history, are pending and it is also not mentioned that custodial interrogation is required for collection of any documentary evidences, I find it fit and appropriate to use the discretion vested by the law in favour of applicant/accused subject to the strict conditions for the apprehensions mentioned and the following order is passed."

21. What appears that while granting successive bail application, consideration which weighed learned Sessions Judge is that subsequent to rejecting bail application of the respondent accused, two accused viz. Mrs.Niyati Shah and Mr.Hemal Parmar have obtained anticipatory bail, whereas, accused - Dimple Chaudhary has been given regular bail and NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined therefore, principle of parity applies in the present case. Learned Sessions Judge has also considered that Mrs. Niyati Shah who is accused has sold the disputed property through power of attorney and the respondent accused is purchaser and therefore, principle of parity applies. Antecedent of previous offence registered against the accused are brushed aside by the learned Sessions Judge and given finding that prosecution has not produced any documentary evidence to indicate about progress of trial of those offence and moreover, it is believed by learned Sessions Judge that there is no requirement of custodial interrogation.

22. Two different Sessions Judges have recorded and decided first and second anticipatory bail application. Perusing these judgment and orders, it appears that even in first bail application, learned Sessions Judge has examined role of the accused and denied to grant anticipatory bail. As stated herein above, order denying bail has not been carried to challenge before the High Court. In 2<sup>nd</sup> successive bail application, learned Sessions Judge has again examined role of the accused under the pretext of applying principle of parity and as such reviewed earlier order. It is no doubt that principle of parity would be one of the relevant factors while deciding bail application, but issue

arise whether principle of parity would apply if role of accused is already examined at earlier point of time and another accused got bail subsequent thereto.

23. In the case of Arun Ghisalal Varma (supra), this Court has examined the issue in para 8.5, 8.6, 8.7, 8.8 and 8.9, which NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined reads as under :-

"8.5. On this count, it would be appropriate to make reference of the decision of this Court in the case of Bharatsingh @ Pappu Tribhovan Singh Rajput (supra) wherein the Court has observed in para-8 and para 21 that :-

"8. The next contention which was argued before the learned Judge was that other co-accused of the case have been enlarged on Bail by the Gujarat High Court in Criminal Misc. Application No.929 of 2002, therefore, the present applicant - accused should also be released on Bail. The said contention was rejected by holding that the previous Bail Application of the applicants accused were rejected by the Court, therefore, it would not be a ground to release them on Bail."

21.....In my considered opinion merely because another co-accused of this case has been enlarged on bail by another learned Single Judge of this Court would not be a ground to release the present accused on bail."

8.6. In the case of Central Bureau of Investigation, Hyderabad v. Subramani Gopalakrishnan & Anr. [(2011) 5 SCC 296], while considering the case of the accused No.4, who made request for bail on the ground that accused No.5 was released on bail, the Apex Court declined the request observing that the request cannot be accepted as accused No.4 cannot be put on the same footing as the accused No.5 and there was no similarity in respect of the role of accused No.4 and accused No.5.

8.7. Thus, the stand - alone fact viz. that a co-accused is granted bail, in itself and without anything more would not justify the request for bail by a person whose request is once rejected (or withdrawn) and would not tantamount to substantial "change in circumstance" having impact on previous decision, which is the requirement. The above decisions bring out the dimension that merely because some co-accused is subsequently granted bail, an accused whose earlier application is rejected/withdrawn would not NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined be justified to maintain successive application on the same ground raised in earlier application. Thus, an applicant in successive application needs to urge different - other grounds to maintain the application.

8.8. So as to take shield against the above noted requirements, the applicant claimed parity with the persons to whom the Court granted bail after withdrawal of applicant's earlier application. Now, so far as the claim for parity is concerned, on that count also, the facts, in my view, do not support or justify the applicant's case. So far as the order granting bail to other co-accused persons are concerned, it is claimed that two persons, who are witnesses to the disputed Agreement to Sell and one other person (a stamp vendor) have been granted bail after the applicant withdrew his previous



application and that therefore, he may also be granted anticipatory bail.

8.9 The ground of parity is not available for more than one reasons. Even if one proceeds on the premise that the order granting bail to other accused persons would constitute change in circumstance then also, ipso-facto it would not make available a ground to claim parity. In present case the nature of allegation against the said persons vis-a-vis present applicant and the role allegedly played by the applicant and the position or the relation the applicant had enjoyed with the complainant and the allegation that he played pivotal role in the matter, places the applicant's case on different footing and, therefore, I am of the view that ground of parity is not available to the applicant in present case. This is evident from the fact that the two accused persons, who are enlarged on bail acted as witnesses to the alleged execution of the documents whereas the applicant is the person, who claims to be the holder/grantee of the Power of Attorney constituted by the complainant and then he presented himself as complainant's constituted attorney and he executed the disputed sale deed. Thus, the order granting bail to the said two persons (witnesses to the documents) cannot provide ground of parity to the applicant. The third person, who has been granted bail (after the applicant withdrew his application) is the stamp vendor. The stamp vendor, a woman, has been granted bail but that is granted - after NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined her arrest and after she was held in custody and that too principally on the ground that the said stamp vendor is a lady. Thus, the said order also will not provide any parity to the applicant whose role is materially different and who has claimed anticipatory bail."

24. What appears from the above decision that merely because some accused has been granted bail and accused whose bail application is withdrawn would not be justified to maintain successive application on the same ground raised in earlier application. It is held by the Co-ordinate Bench that the applicant in successive bail application needs to urge different / other grounds to maintain application.

25. In the present case, barring claiming parity, respondent accused has not pleaded any other or new grounds or subsequent development. What appears on perusing impugned order that learned Sessions Judge has reviewed earlier order of rejecting bail application. In such a way, discretion under section 438 of Cr.P.C. cannot be exercised. Review is not permissible. Err has crept. Anticipatory bail granted to respondent accused is on unjust, irrelevant and untenable grounds.

26. It is not in dispute that rejection of bail is one thing but cancellation of bail is harsh order and it deals with personal liberty of the individual who has been granted bail. The Court while dealing with application for cancellation of bail under section 439(2) of Cr.P.C. is required to consider whether supervening circumstances exist which requires to cancel bail, NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined whether there is breach of condition or whether irrelevant materials were taken into consideration by the Court below while granting anticipatory bail. In the case of *Puran v/s. Rambilas* and another [2001 (6) SCC 338], it was noted as follows :-

"Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in Gurcharan Singh v. State (Delhi Admn.) reported in AIR 1978 SC 179. In that case the Court observed as under:-

"If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under S. 439 (2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court."

27. This Court has examined the aspect that whether there was other and subsequent grounds available to the learned Trial Court to entertain successive bail application and to grant anticipatory bail in second successive anticipatory bail application. As stated herein above, learned Trial Court has NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined given more weight-age to principle of parity, without discussing role of accused Mrs. Niyati Shah and role of the present respondent accused in detail which was required as it was pressed into service in subsequent bail application. According to case of the prosecution, Mrs. Niyati is wife of complainant, she is unfit to take decision. FSL report indicates that on the basis of signature of the complainant on power of attorney, some money was lent to accused Mrs. Niyati and in return sale deed of disputed property has been obtained at meager price. Disputed property which was priced at around Rs.1 crores and purchased by the complainant few months back has been carry off at meager price about Rs.40 lakhs by the accused taking benefit of condition of accused Mrs. Niyati Shah who is unfit to take decision by forging power of attorney of the complainant. Role of the accused is much bigger then role played by other accused. Thus, there was no legal ground or justification to entertain second successive bail application, after earlier one was rejected. Even otherwise, learned Trial Court has committed error in entertaining successive bail application on the grounds which are not new or arise after decision of first bail application.

28. From the record it can be noticed that when learned Sessions Judge has passed the impugned order on 13.04.2024, but during pendency of second successive bail application, charge-sheet in the offence ie. C.R.No.11192015220529 of 2022 registered with Changodar Police Station was filed and accused - Karan Devendra Rabari is shown in column no.2 as absconding accused. Charge-sheet was filed along with report of Director of Forensic Science approving that signature on the POA is not of NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined the complainant. Learned Sessions Judge has not noticed that accused is absconding as per charge-sheet. Co-ordinate Bench in Criminal Misc. Application No.15574 of 2023 filed for getting

anticipatory bail in connection with CR No.11191048230463 of 2023 registered with Sarkhej Police Station, Ahmedabad rejected the anticipatory bail application and held that accused is absconding and warrant under section 70 of Cr.P.C. is also issued against him in that offence. Para 9 of the said order dated 12.10.2023 reads thus :-

"[9.o] Further, the investigation papers clearly reveal that the present applicant has remained absconding despite issuance of warrant under Section 70 of the CrPC and therefore, in view of the law laid down by the Hon'ble Apex Court in case of State of Haryana vs. Dharamraj reported in 2023 INSC 784; Lavesh vs. (NCT of Delhi) reported in (2012) 8 SCC 730; Abhishek vs. State of Maharastra reported in 2022 (8) SCC 282 and Prem Shankar Prasad vs. State of Bihar reported in 2021 SCC OnLine SC 955, I am of the considered view that this is not a fit case to exercise the jurisdiction in favour of the applicant."

29. From the police report taken on record, it appears that accused was enlarged on anticipatory bail being Cr.M.A.No.2112 of 2022 for CR No.11192015220351 of 2022 registered with Changodar Police Station. In the offence, after filing of charge- sheet, Criminal Case No.3438 of 2023 was registered. The accused did not remain present before the Court and therefore, Nonailable warrant is issued against him. So practically it indicates cancellation of bail granted in Cr.M.A.No.2112 of 2022. Accused is absconding and warrant under section 70 of Cr.P.C. is issued in two cases.

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30. Section 70 of Cr.P.C. reads as under :-

70. Form of warrant of arrest and duration.

(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.  
(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

31. Warrant issued under section 70 shall remain in force till it is cancelled, in view of section 70(2) of Cr.P.C.

32. At this juncture, I may refer to judgment of Hon'ble Apex Court in the case of Srikant Upadhyay v/s. State of Bihar [2024 INSC 202]. Hon'ble Apex Court dealt with meaning of term absconding. Para 17 to 20 are relevant, which reads as under :-

"17. Section 70 (2), Cr. PC mandates that every warrant issued under Section 70 (1), Cr. PC shall remain in force until it is cancelled by the Court which issued it, or until it is executed. In this case, as noticed hereinbefore, theailable warrants and thereafter the non-ailable warrants, were issued against the appellants. They were neither cancelled by the Trial Court nor they were executed. It is not their case that

they have successfully challenged them. Sections 19, 20, 21, 174 and 174 A, IPC assume relevance in this context. They, insofar as relevant read thus:

19. "Judge".- The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body or NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined persons, which body of persons is empowered by law to give such a judgment.

20. "Court of Justice".- The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

21. "Public servant".- The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:-

[Third.-Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;]

174. Non-attendance in obedience to an order from public servant.-

Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both, or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

174A. Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.-

Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub- section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined term which may extend to seven years and shall also be liable to fine.

18. Taking note of the aforesaid facts with respect to the issuance of summons, warrants and subsequently the proclamation, a conjoint reading of Sections 19, 20 and 21, IPC containing the terms "Judge", "Court of Justice" and "Public Servant" and Sections 174 and 174A, IPC can make them liable even to face further proceedings. Same is the position in case of non-attendance in obedience to proclamation under Section 82, Cr. PC.

19. Bearing in mind the aforesaid provisions and position, we will refer to certain relevant decisions. In Savitaben Govindbhai Patel & Ors. v. State of Gujarat<sup>5</sup>, the High Court of Gujarat observed thus:

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"9. Filing of an Anticipatory Bail Application by the petitioners-accused through their advocate cannot be said to be an appearance of the petitioners-accused in a competent Court, so far as proceeding initiated under Section 82/83 of the Code is concerned; otherwise each absconding accused would try to create shelter by filing an Anticipatory Bail Application to avoid obligation to appear before the court and raises the proceeding under Section 83 of the Code claiming that he cannot be termed as an absconder in the eye of law. Physical appearance before the Court is most important, if relevant scheme of Sections 82 and 83, is read closely."

(underline supplied)

20. We are in full agreement with the view taken by the Gujarat High Court that filing of an anticipatory bail through an advocate would not and could not be treated as appearance before a court by a person against whom such proceedings, as mentioned above are instituted. The meaning of the term "absconded" has been dealt by us hereinbefore. We found that its etymological and original sense is that the accused is hiding himself. What is required as proof for absconding is the evidence to the effect that the person concerned was knowing that he was wanted and also about pendency of warrant of arrest. A detailed discussion is not warranted in this case to understand that the appellants were actually absconding.

NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined It is not in dispute that they were served with the "summons". The fact thatailable warrants were issued against them on 12.04.2022 is also not disputed, as the appellants themselves have produced the order whereunderailable warrants were issued against them. We have already referred to Section 70 (2), Cr. PC which would reveal the position that once a warrant is issued it would remain in force until it is cancelled by the Court which issued it or until its execution. There is no case for the appellants that either of such events had occurred in this case to make the warrants unenforceable. They also got no case that their application was interfered with by a higher Court. That apart, it is a fact that the appellants themselves on 23.08.2022, moved a bail-cum-surrender application before the Trial Court but withdrew the same fearing arrest. It is also relevant to note that in the case on hand even while contending that they were before a Court, the appellants got no case that in terms of the provisions under Section 438 (1-B), Cr. PC an order for their presence before the Court was ordered either suo motu by the Court or on an application by the public prosecutor. When that be the circumstance, the appellants cannot be allowed to contend that they

were not hiding or concealing themselves from arrest or that they were not knowing that they were wanted in a Court of law."

33. Above aspect clearly held that accused is absconding in two cases and was also not available when charge-sheet was filed in C.R.No.11192015220351 of 2022 registered with Changodar Police Station. It makes clear that accused has misused his personal liberty. He is on run.

34. One more aspect that has not been noticed by learned Sessions Judge while granting anticipatory bail to the accused is antecedents of accused. Report placed by the Investigating Officer indicates that as many as 8 offences are recorded against the accused - Karan Devendrabhai Rabari. They are as under :-

NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined (1) C.R.No.838 of 2012 registered with Vastrapur Police Station.

(2) C.R.No.160 of 2014 registered with Odhav Police Station.

(3) C.R.No.120 of 2016 registered with Navrangpura Police Station.

(4) C.R.No.3073 of 2016 registered with Vastrapur Police Station.

(5) C.R.No.94 of 2015 registered with Adalaj Police Station.

(6) C.R.No.11191020220162 of 2022 registered with Vastrapur Police Station.

(7) C.R.No.71 of 2014 registered with Adalaj Police Station.

(8) C.R.No.11191048230463 of 2023 registered with Sarkhej Police Station.

35. In addition to above, accused was also send behind bar in PASA proceedings. Learned advocate Mr.Bhatt for the respondent - accused would submit that in 2 offences, accused is acquitted and rest of the offences are pending. He would submit that PASA proceedings are quashed by this Court. These issues have not been dealt with by the learned Sessions Court while entertaining second successive bail application. Antecedents of accused being previous offences registered against him are one of the important and relevant consideration while deciding bail application. This has been totally allowed to go by, by the learned Trial Court by giving finding that NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined prosecution has not produced any documentary evidence. According to this Court, finding arrived by learned Sessions Court is perverse, unjust and illegal and on irrelevant grounds.

36. So far as Criminal Misc. Application No.2112 of 2022 is concerned, learned Trial Court has issued warrant under section 70 of Cr.P.C. against the accused. In view of section 70(2) of Cr.P.C., it remains in force till it is executed or cancelled. Issuance of warrant itself is sufficient to indicate that

accused is not cooperating and he is on run. It is amounting to breach of condition and misuse of personal liberty. Thus, anticipatory bail granted to the accused is required to be set aside.

37. Learned advocate Mr.Bhatt for the respondent - accused made various contentions including allegation of atrocious act on the part of police and submits that police in connivance with complainant is behind the respondent accused. Since criminal inquiry in this regard is pending before the concerned Court, this Court restrains itself from observing anything in this regard. Some other submissions are canvassed by learned advocate Mr.Bhatt that complainant once failed to get relief in civil proceedings, he has given color of criminality to the issue and therefore, such act and behaviour on the part of the complainant should not be accepted to cancel the bail. To be noted that on going through charge-sheet papers, prima facie it appears that signature of the complainant is forged on power of attorney. FSL report is attached with the charge-sheet papers. Accused is direct beneficiary of such act carried through forged power of attorney and got registered sale deed of the bungalow valued at NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined more than one crore at meager price of Rs.40 lakhs and odd amount, as such has grabbed the valuable immovable property of the complainant. In given set of facts, civil proceedings or criminal offence may emerge. Hon'ble Apex Court in Vesa Holdings P.Ltd. v/s. State of Kerala (supra) in para 9 has held that because civil remedy may be available to the complainant that itself cannot be ground to quash criminal proceedings. While putting real test, the Hon'ble Apex Court held that whether the allegation in the complaint disclose criminal offence of cheating or not is to be find out. As stated herein above, FSL report indicates that signature of the complainant is forged on power of attorney. Prima facie case is made out against the accused. Only because parties are perusing civil proceedings, in the case on hand, it would not amount to abuse of process of Court and would not come in the way to cancel bail.

38. Overall reasons spells that learned Sessions Court has erred in entertaining second successive bail application and exercised discretion on irrelevant consideration as well as on unjust grounds.

39. Principle of parity and its application has been strongly argued by learned advocate Mr.Bhatt for the respondent accused to submit that learned Court has considered parity as change of circumstances, in view of bail granted to accused Mrs.Niyati Shah, in view of judgment of this Court in the case of Ramesh Batukbhai Dabhi and Vikram Anil Gautam (supra). Howbeit, this issue is succinctly addressed herein above, yet I may take assistance of judgment of the Hon'ble Apex Court in the case of NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined Tarun Kumar v/s. Assistant Director, Directorate of Enforcement [2023 INSC 1006]. Para 18 and 19 are relevant, which reads as under :-

"18. The submission of learned Counsel Mr. Luthra to grant bail to the appellant on the ground that the other co- accused who were similarly situated as the appellant, have been granted bail, also cannot be accepted. It may be noted that parity is not the law. While applying the principle of parity, the Court is required to focus upon the role attached to the accused whose application is under consideration. It is not disputed in that the main accused Sh. Kewal Krishan Kumar, Managing Director of SBFL, and KMP of group companies and the other accused Devki Nandan Garg,

owner/ operator/ controller of various shell companies were granted bail on the ground of infirmity and medical grounds. The co-accused Raman 19 Bhuraria, who was the internal auditor of SBFL has been granted bail by the High Court, however the said order of High Court has been challenged by the respondent before this Court by filing being SLP (Crl.) No. 9047 of 2023 and the same is pending under consideration. In the instant case, the High Court in the impugned order while repelling the said submission made on behalf of the appellant, had distinguished the case of Raman Bhuraria and had observed that unlike Raman Bhuraria who was an internal auditor of SBFL (for a brief period statutory auditor of SBFL), the applicant was the Vice President of Purchases and as a Vice President, he was responsible for the day-to-

day operations of the company. It was also observed that the appellant's role was made out from the financials, where direct loan funds have been siphoned off to the sister concerns of SBFL, where the appellant was either a shareholder or director. In any case, the order granting bail to Raman Bhuraria being under consideration before the coordinate bench of this Court, it would not be appropriate for us to make any observation with regard to the said order passed by the High Court.

19. It is axiomatic that the principle of parity is based on the guarantee of positive equality before law enshrined in NEUTRAL CITATION R/CR.MA/15704/2022 CAV JUDGMENT DATED: 05/04/2024 undefined Article 14 of the 20 Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision."

40. Learned advocate Mr.Bhatt for respondent accused has also submitted that this is case where complainant hand in glove with police has attempted to over reach Civil Court proceedings. The police has approached Civil Court and requested not to accept documents viz. forged power of attorney and relevant documents and submitted that it is clear connivance by the police with the complainant and there is no procedure in the procedural law permitting the police to approach Civil Court seeking relief that plaintiff may not be permitted to produce such documents in Court. It is submitted that such attempt implies how complainant and police are eager to see that personal liberty of the accused may be jeopardized. It was submitted that Constitutional Bench of the Hon'ble Supreme Court in the case of PSR Sadhanantham v/s. Arunachalam [(1980) 3 SCC 141] appreciated as poetry in prose - Article 21, in its sublime brevity, guards human liberty by insisting on the prescription of procedure established by law. It is submitted that in the present petition, attempt is made on the part of the complainant with police to deprive personal liberty of the accused.

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41. Since this Court believes that on irrelevant grounds, discretion has been wrongly exercised by the learned Sessions Court by entertaining successive bail application, arguments canvassed by learned advocate Mr.Bhatt does not survive. The judgments on which learned advocate Mr.Bhatt has referred and relied in support of his case does not render any assistance in his favour.

42. In wake of above reasons, both the petitions are allowed. Anticipatory bail granted to the accused viz. Karan Devendrabhai Rabari and Arjun Devendrabhai Rabari in Criminal Misc. Application No.2112 of 2022 and Criminal Misc. Application No.1214 of 2023 are hereby cancelled. The respondents accused are ordered to surrender within seven days from today before the authority, failing which the authority shall be at liberty to take necessary action.

43. Needless to say that observations and findings arrived hereinabove are limited to decision on these applications. They shall not influence any other proceedings arise between the parties.

(J. C. DOSHI,J) SATISH