

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 19331
of 2023**

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ROOPKUMAR NAIDU

Versus

STATE OF GUJARAT

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Appearance:

MR MEHUL M MEHTA(3416) for the Applicant(s) No. 1

MR RAMNANDAN SINGH(1126) for the Respondent(s) No. 1

MS ASMITA PATEL, ADDL. PUBLIC PROSECUTOR for the Respondent(s)
No. 1

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**Date : 18/01/2024****ORAL ORDER**

1. By way of the present petition under Section 438 of the Code of Criminal Procedure, 1973, the petitioner has prayed to release him on anticipatory bail in case of his arrest in connection with the FIR registered as **C.R.No.11216007230386 of 2023** registered with **Sector 21 Police Station, Gandhinagar** for the offences punishable u/s 420, 467, 468, 471, 120B of the IPC.

2. Brief facts of the case are that police complaint is filed by Mr. Veer Singh Babulal Dangi stating that present accused person along with other co-accused persons had hatched a pre-planned conspiracy and against the complainant and misused his documents PAN card, Aadhaar card, photo etc. to opened bank account in the Canara Bank Sector-16 Gandhinagar

branch in the name his firm, Om Catering by doing false signature of complainant and done RY many bank transaction without his knowledge and closed down the said bank account without paying the GST on it and committed fraud with the complainant.

3. Heard learned advocate Mr. Mehul Mehta for the petitioner, learned advocate Mr. Ramnandan Singh for the complainant and learned APP Ms. Asmita Patel for the State.

4. Learned advocate for the petitioner would submit that the present petitioner is innocent; he is retired Class I government officer and falsely implicated in the offence. He would further submit that the petitioner has not played any active role in commission of the offence. He would further submit that the FIR is filed against the petitioner as pressurized tactics. According to the FIR, the main accused is Rajeev Naidu, son of the present petitioner. He would further submit that the petitioner is now retired, however, he was Regional Director of the then Sports Authority of India at the relevant time and thus, taking the advantage of that aspect, he has been falsely involved in the offence. He would further submit that the entire offence related to the documents only and the documents are in custody of the investigating officer. He would further submit that the petitioner is not the beneficiary of the alleged transaction nor petitioner has played any active role in opening the bank account with the Canara bank and as such, has not misused the account of Om catering fraudulently opened with the Canara Bank. He would further submit that even otherwise Mr Vivek Sahu was

authorised by the partner of Om catering belongs to the first informant to conduct and carry banking activity. He would further submit that as per para 51, Annexure F, Om catering is belonged to the complainant and one Mr Punit Agarwal and they have authorised Mr Vivek Sahu to operate all the activities on behalf of them. He would further submit that Mr. Vivek Sahu is the main person who has played role in opening of the account in Canara Bank by misusing documents like pan card, Aadhaar card etc.

4.1 It is further submitted by learned advocate for the petitioner that the petitioner is a senior citizen and is ready and willing to join the investigation. Referring to page 45, he would submit that though it is alleged that the petitioner has misused the bank account and transferred money to purchase immovable property at Nagpur, in fact, the execution of the agreement indicates that the agreement was executed between Orange Infrastructure Development and Mr Punit Agarwal, who is partner of Om catering. He would further submit that, false allegation of financial gain has been levelled against the petitioner.

4.2 Referring to affidavit filed by the first informant, Learned advocate for the petitioner would submit that the present FIR is a counter blast to evade the liability of the GST authority. He would further submit that the petitioner has never misused the bank account of Om catering nor has got financial gain from it. He would further submit that no forged document has ever been created by the petitioner or submitted them as genuine. Upon

such submissions he request to allow this petition.

4.3 Learned advocate for the petitioner has also submitted that the petitioner is ready and willing to join the investigation; he is permanent residence of Nagpur; no flight-risk is there; the petitioner is readily available as and when called by the investigating officer. Thus, he submitted to grant pre-arrest bail on condition to the petitioner.

5. Learned advocate Mr Ram Nandan Singh for the first informant has taken this court through the affidavit in reply filed by the first informant, more particularly page 79 onwards, to submit that the petitioner is one of the gainers of the bank account fraudulently opened in name of Om catering and he has misused the bank account. He would further submit that the petitioner was in charge of the Sports Authority of India when Om catering was operating. The petitioner was having control over the documents like pan card, Aadhaar card etc. of Om catering and taking the copies of those documents, the petitioner helped accused Nos.2 and 3 to open the bank account with the Canara bank in name of Om catering. Thereafter, multiple transactions involving in huge financial gain and financial responsibility has been undertaken which ultimately called for to pay the GST.

5.1 Referring to para 18 and 24 of the affidavit in reply, learned advocate for the first informant would submit that a clear contention has been made by the first information that apart from the allegation of misuse, the Canara Bank account is

opened by using forged document. It is alleged that the transaction of the amount has been carried in tune of Rs.5,41,000/- to purchase LIC policy in name of Rahul Naidu, brother of the petitioner and transaction of Rs.25 lakhs has been taken place for purchasing farmhouse in name of the petitioner. This contention is not denied by the petitioner by filing counter affidavit. Thus, this contention indicates that the petitioner has obtained financial gain by misusing the bank account opened with the Canara bank using forged documents of Om catering. Thus, he request to dismiss the petition.

6. Adopting the arguments of learning advocate, Mr Ram Nandan Singh and joining with him, learned APP placed on record the statement of the disputed bank account to submit that on multiple times, the account has been misused by the petitioner for personal gain. She would further submit that the investigating officer has recorded statement of Mr Vivek Sahu one of the accused and in that statement, he has clearly stated that the present petitioner was the Regional Director of the Sports Authority of India and has pressurized the officials of the Canara bank to open the bank account in name of Om catering on the forged documents. She would further submit that in view of the statement of Mr Atul Ratnakar, it is established that the petitioner has purchased farmhouse of 900 sq ft in the year 2012 for a sale consideration of Rs.25,00,000 and the same amount has been transferred from the disputed bank account from Gandhinagar. Thus, prima facie case is made out against the present petitioner and custodial interrogation is required. Upon submission, she requests to dismiss the petition.

7. Having heard learned advocates for both the parties, at the outset, what appears that account in name of Om catering was opened. It is undeniable aspect. It is also unable aspect that it was not opened by the partner of Om catering but it has been opened subsequently by using PAN card, Aadhaar card and photos. This account was opened in the Canara bank in name of Om catering. It also appears that cheque-book was also taken from the Canara Bank qua said account. It also appears that mobile number of Mr Rajeev Naidu was tendered while opening the bank account in name of Om catering with the Canara bank. It is also important to note that at that time, the petitioner was the Regional Director of the Sports Authority of India and was posted at Gandhinagar and that he was a Class I government officer. It is specifically stated in the statement of Mr Vivek Sahu that petitioner has pressurized the officials of the Canara bank to open the account. From such statement, misuse of the power is discernible. The power is misused to open the bank account in name of Om catering for helping the petitioner's son and Mr. Vivek Sahu. Undeniable aspect of multiple transactions involving huge amount is also envision. Prima facie, it appears that in name of the first informant and his partner, bank account in name of Om catering was opened by placing forged documents and huge transaction has taken place. The petitioner has played active role therein. This issue therefore requires thorough investigation.

8. It is an admitted position that the account opened with the Canara bank was later on closed, but before that, multiple

transactions have been taken place by which the GST liability is created. The statement of the witness recorded under section 161 of the Code of Criminal Procedure, 1973 namely Mr Atul Ratnakar also indicates that the petitioner has purchased the farmhouse at Nagpur on the sale consideration of Rs.34 lakhs in which Rs.25 lakh was paid through the account maintained in name of Om catering which is stated to be a forged account. Thus, it appears that the petitioner has misused his position and not only helped his close relative Mr Rajeev Naidu in opening the bank account in name of Om catering with Canara Bank, by using the documents of Om catering which was lying with him as early point of time, but also obtained financial gain from that account. Thus, prima facie case is made out and the custodial interrogation of the petitioner is required.

9. In case of **Pratibha Manchanda and another Vs. State of Haryana and another reported in (2023) 8 SCC 181**, the Hon'ble Apex Court in para 21, observed as under:-

“21. 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 binvestigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome.”

Keeping in mind the law laid down by the **Hon'ble Supreme**

Court in the case of (i) **State Rep. by the CBI V/s Anil Sharma** reported in 1997 (7) SCC 187, (ii) **Adri Dharan Das V/s State of W.B.** reported in 2005 (4) SCC 303 (iii) **P. Chidambaram V/s Directorate of Enforcement** reported in AIR 2019 SC 4198, wherein the Hon'ble Supreme Court has held as follows:

"The legislative intent behind the introduction of Section 438 CrPC is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights – safeguarding the personal liberty of an individual and the societal interest.

Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. It may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In this view, it cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant/applicant under Article 21 of the Constitution of India.

Consequently, power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail.

Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Section 438 CrPC is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. Anticipatory bail is to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy".

Having regard to nature of allegations and stage of investigations, held investigating agency must be given sufficient freedom in process of investigation. Appellant not entitled to anticipatory bail as the same would hamper the investigation".

10. Resultantly, present petition fails and stands dismissed.
Notice discharged.

SHEKHAR P. BARVE

(J. C. DOSHI,J)