

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR SUCCESSIVE REGULAR BAIL -
AFTER CHARGESHEET) NO. 22333 of 2023**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Sd/-

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

MANSUKHBHAI NANJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR. SHALIN MEHTA, LD. SR. ADV. WITH MR.DIPAK B PATEL(3744) for the Applicant(s) No. 1

MR. J.K. SHAH, LD. ADDL.PUBLIC PROSECUTOR for the Respondent(s) No. 1

MR. J.S. ADESHRA, LD. ADV. for the Respondent(s) No.2

CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 10/01/2024

ORAL JUDGMENT

- Rule returnable forthwith. Learned APP waives service of notice of rule for and on behalf of the respondent-State and

learned advocate Mr. J.S. Adeshra waives service of notice of rule for and on behalf of the respondent No.2-original complainant.

2. The present successive application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the FIR being C.R. No. Part-A-11822015230772 of 2023 registered with the Jalalpore Police Station, Navsari of the offence punishable under Sections 465, 467, 468, 471, 201 and 120(B) of the IPC.

Factual Matrix

3. The broad facts and events as discernible from the record may be stated as under:

(i) The first information report came to be filed by the first informant, namely, Bhanuben @ Jyotsnaben Wd/o Hasmukhbhai Devjibhai Patel and D/o. Keshavbhai Ramabhai on 27.06.2023 for the incident alleged to have been taken place in the month of May, 2005 arraigning the present applicant as the sole accused.

ii) It is alleged in the complaint that the complainant is a widow having two sisters and one brother and doing household work. She is the youngest sister and brother is younger to her.

(iii) It is stated in the complaint that the land in question bearing Revenue Survey Nos.199/1 and 199/2 (old tenure land) situated at Jalalpore total admeasuring 0-09-11 is her ancestral property which was purchased by her father, namely,

Keshavbhai Ramabhai Patel on 17.11.1960 from one Maganbhai Chhibabhai which came to be certified in the village Form No.6 on 12.06.1961 vide Entry No.2947.

(iv) It is alleged in the complaint that the present applicant-accused, as a power of attorney holder of deceased Keshavbhai Ramabhai, in connivance with the other co-accused, has fraudulently sold out the aforesaid land in question to the other co-accused by executing a bogus registered sale-deed.

(v) It is stated in the complaint that the complainant came to know about such fraud when the power of attorney holder of the son and daughter of her brother, namely, Panchabhai Dudhabhai Dudhar made an application before the concerned police station as regards the aforesaid fraud committed by the applicant-accused qua their share in the land.

(vi) Thereafter, the complainant elicited the copies of the 7/12 abstract, 8/A and the Record of Rights from the office of the Mamlatdar, from which, it appears that the said land is running in the name of Labhuben Gordhanbhai Patel. However, upon deep scrutiny of the record, the complainant came to know that the name of her father Keshavbhai Ramabhai was running in the revenue record from 1961 to 2005.

(vii) Thereafter, during the course of such inquiry, the complainant came across one general Irrevocable Power of Attorney duly executed by her father in the name of the present applicant-accused on 31.05.2005 which was notarized

by one notary Harshad I. Naik on 20.06.2005.

ix) It is alleged that on the basis of the said power of attorney, the applicant-accused, as a power of attorney holder of Keshavbhai Ramabhai, has sold out the ancestral land of the complainant to the co-accused Labhuben Gordhanbhai Patel on 11.05.2005 by way of registered sale deed bearing No.4330/2005. The allegation is that despite the fact that the father of the complainant had died in the year 1984, the present applicant-accused has created a bogus power of attorney in his name by forging the signature of her father but the applicant-accused has not put his signature as a holder. Hence, the impugned FIR.

CONTENTIONS

4. Learned senior advocate Mr. Shalin Mehta assisted by learned advocate Mr. Dipak Patel appearing for the applicant has submitted that the alleged incident took place somewhere in the year 2005, for which, the first information report came to be lodged on 27.06.2023. The applicant-accused was arrested on 27.08.2023 and he is in jail ever since. Learned senior advocate Mr. Mehta has submitted that the father of the complainant was the actual owner and occupant of the land in question which was purchased by him from one Maganbhai Chhibabhai on 17.11.1960 by way of registered sale deed. Thereafter, on the basis of the said sale deed, entries came to be mutated in the revenue record and since then the said property was running in the name of the father of the complainant. It is further submitted that the father of the

complainant died in the year 1984. Learned senior advocate Mr. Mehta has also submitted that the complainant has two sisters and one brother and all of them have equal shares in the said ancestral property. It is further submitted that it is alleged that the applicant-accused has created a bogus irrevocable power of attorney in his name in respect of the land in question in the year 2005 by forging the signature of the father of the complainant despite the fact that he has passed away in the year 1984. Learned senior advocate Mr. Mehta has further submitted that in fact the entire administration of the said property was being handled by one lady, namely, Chandrikaben Jitendrabhai Patel, who happens to be the granddaughter of the deceased Keshavbhai Ramabhai Patel, i.e., the original owner. It is further submitted that in fact the said bogus power of attorney has been executed at the behest of the said Chandrikaben. One Panchabhai Dudabhai Dudhat is the power of attorney holder of Chandrikaben and Dharmeshbhai who happens to be the daughter and son of Harishbhai Keshavbhai Patel (son of Keshavbhai Ramabhai Patel). Learned senior advocate Mr. Mehta has further submitted that the said Chandrikaben and Dharmeshbhai called the applicant-accused at their office and introduced one person as Keshavbhai Ramabhai Patel and told him that the said Keshavbhai Ramabhai Patel wants to execute a power of attorney in his favour. Accordingly, the applicant-accused completed unaware about the conspiracy hatched by the other accused persons, agreed to execute the power of attorney believing the person who was introduced to him as Keshavbhai Ramabhai Patel. Thereafter, on the basis of the said power of attorney, the land in question was allegedly sold by the

applicant-accused to one Labhuben Gordhanbhai Patel. Learned senior advocate Mr. Mehta has submitted that the entire transaction was done by Panchabhai Dudhabhai Dudhak and Chandrikaben and the present applicant-accused has made a scapegoat by them. It is further submitted that the present applicant-accused has not received a single penny from the said transaction which is evident from the receipts issued by the purchaser of the said land. The said receipt were issued in the name of Chandrikaben and Dharmeshbhai.

5. Learned senior advocate Mr. Mehta has submitted that during the course of investigation, statements of the complainant as well as the other two sisters were recorded by the Investigating Officer, wherein, they have very categorically stated that the land in question is their ancestral property and all the heirs have equal shares in the same. It is further stated that they have not executed any power of attorney or consent deed in favour of Chandrikaben in respect of the land in question or for their other ancestral properties. The said Chandrikaben has never informed them about any fraudulent transaction in respect of the said land. It is further stated by them that they don't know about as to whom and how the said Chandrikaben has sold out their ancestral land. Learned senior advocate Mr. Mehta has further submitted that there is no evidence on record that the present applicant-accused has gained any monetary benefit from the said transaction. It was the Panchabhai Dudhabhai and Chandrikaben who received money from the transaction in question. It is also submitted that the applicant-accused does not have any past antecedents and he has been made scapegoat by the

complainant, Pachabhai and Chandrikaben. The applicant-accused did not know anything about the conspiracy hatched by the other accused persons. He even did not aware about the fact that the original owner Keshavbhai Ramabhai was dead at the time of execution of the power of attorney. The present applicant-accused was dodged by Pachabhai and Chandrikaben keeping him in dark about the death of the original owner Keshavbhai Ramabhai Patel.

6. In such circumstances, referred to above, learned senior advocate Mr. Mehta prays that there being merit in his application, the same be allowed and the applicant-accused be enlarged on bail.

7. Per contra, this application has been vehemently opposed by learned APP Mr. J.K. Shah. Learned APP Mr. Shah has submitted that the role of the present applicant-accused is clearly spelt out from the body of the compilation of the charge-sheet papers. Learned APP Mr. Shah has further submitted that the conduct, approach, attitude and behaviour of the applicant-accused clearly shows that there was clear cut mens rea on the part of the applicant-accused. Even the applicant-accused is the kingpin of the entire conspiracy of creating the forged and fabricated power of attorney in his name in respect of the land in question knowing fully well that the executant has already been died at the time of execution of the said power of attorney. The entire plan has been designed by the applicant-accused along with the other co-accused with a view to grab the valuable property of the complainant. Not only that, thereafter, on the basis of the said

false and fabricated power of attorney, the applicant-accused has sold out the land to one Labhuben Gordhanbhai Patel by executing a registered sale deed. Learned APP Mr. Shah has further submitted that the power of attorney cannot be executed in favour of any person to whom you don't know or rather one cannot act as a power of attorney holder unless he is very well acquainted with the executant. Except the above, one can only ready to act as a power of attorney holder if he or she is having any interest in the same and, therefore, in my view, the contention of learned senior advocate that the applicant-accused has not gained any monetary benefit, does not inspire any confidence. Learned APP Mr. Shah has also submitted that here in the present case, the applicant-accused is not, in any manner, a close relative or a friend of Chandrikaben and Dharmeshbhai. It is also submitted that the applicant-accused is involved in the commission of the crime from the very inception. Therefore, considering the role attributed to the applicant-accused, this is a fit case wherein discretionary power of this Court is not required to be exercised in favour of the applicant-accused.

8. On the other hand, this application has also been opposed by learned advocate Mr. J.S. Adeshra appearing on behalf of the original complainant. Learned advocate Mr. Adeshra has submitted that the present applicant-accused, in collusion with the other co-accused, hatched a criminal conspiracy to grab the valuable property of the complainant. It is further submitted that it is an admitted position of fact that the father of the complainant died in the year 1984 and he was at all not in existence at the time of execution of the power of

attorney. Despite the same, power of attorney has been executed. It is also an admitted position of fact that the applicant-accused is the holder of the power of attorney. One cannot escape from the situation prevailing on record. Learned advocate Mr. Adeshra has further submitted that the said power of attorney was executed in the year 2005 and on the basis of the same, sale deed also came to be executed in favour of Labhuben Gordhanbhai Patel by accepting the amount of sale consideration as agreed upon between them. Learned advocate Mr. Adeshra has also submitted that with an intention to throw sand in the eyes of the Investigating Officer, a complex plan was designed by all the accused persons and have accordingly played their individual roles. Learned advocate Mr. Adeshra has further submitted that earlier Chandrikaben and Dharmeshbhai through their power of attorney holder had addressed certain letters to the concerned police authority for registration of the FIR against the culprits for fraudulently selling out the land in question as they have the equal share in the said property, pursuant to which, they had received a letter from the concerned police authority about registration of the present FIR. However, as the culprits are rich and influential persons, the complainants, who were trying to register the complaint, have been shown as the accused persons in the charge-sheet. Learned advocate Mr. Adeshra has further submitted that the present applicant-accused has fraudulently executed a power of attorney in his name and thereafter on the strength of the said power of attorney, sold out the land to the other co-accused. It is further submitted that in past also similar kind of offences have been registered against the present applicant-accused and the other

co-accused. Learned advocate Mr. Adeshra has also submitted that the applicant-accused, to save his skin, has tried to shift the entire burden on Panchabhai and Chandrikaben by saying that the receipts of the amount of sale consideration were issued in their names. However, in this regard, learned advocate Mr. Adeshra has placed on record the report of the handwriting expert of a private agency, wherein it is clearly opined that the signatures of Panchabhai and Chadrikaben on the said receipts are forged one. Learned advocate Mr. Adeshra has further submitted that it is pertinent to note that the date of purchase of stamp paper is shown as 07.07.2005 and the date of execution of sale deed is shown as 11.05.2005, i.e two months from the execution of the sale deed, which clearly shows that the accused persons have very deliberately and knowingly done all the things to grab the valuable land of the complainant. Learned advocate Mr. Adeshra has submitted that all the accused persons, in connivance with each other, have hatched a conspiracy and acted according to the said conspiracy. The other accused persons are very influential persons and, therefore, they have yet not been arrested by the police authority despite the fact that they are very much available within the territory of District Navsari. Moreover, in the charge-sheet papers, instead of showing them as the 'absconding accused', it is mentioned that 'they are not found available' which clearly shows the influence of the accused persons over the police machinery. The applicant-accused is not so innocent or clean handed as projected by the learned senior counsel as he is indulged in similar kind of offences in past also and to substantiate his argument, learned advocate Mr. Adeshra has drawn the attention of this Court to

the paper cutting of the local newspaper annexed along with the affidavit filed by the complainant wherein the allegations of land grabbing have been levelled against the applicant herein and the other co-accused. It is important to note that the original power of attorney has yet not been produced on record by the applicant-accused.

9. In such circumstances, referred to above, learned advocate Mr. Adeshra prays that there being no merit in the present application, the same be rejected and the applicant-accused may not be enlarged on bail.

CONCLUSION

10. Heard the learned counsel appearing for the parties at length and perused the record.

11. Over a period of time, it is very common to come across cases where a person gains wrongful benefit by the means of forgery. Such forgery may be of many kinds such as forgery of signatures, documents, electronic records, etc. It is a known fact that the [Indian Penal Code, 1860](#) through its provisions, acts like armour when it comes to protecting the citizens of India from various offences. This includes the offence of forgery as well. Forgery means the creation, addition or alteration of any writing, record, instrument, stamp, register, deed, etc in a false manner to the prejudice of another individual's right. It is an act to commit fraud that is fueled by the intention of deceit. In a case of forgery, the instrument in question is altered in such a manner that if it is passed off as genuine then it shall possess legal value or establish legal liability.

12. In the instant case, the first information report has been registered under sections 465, 467, 468 and 471 and 201 of IPC. The relevant provisions are as under:-

12.1 Section 465 reads as under:

"465. Punishment for forgery.—Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

12.2 Section 467 is as under:

"467. Forgery of valuable security, will, etc.—Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, Criminal Appeal No. 1116 of 2023 shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

12.3 Section 468 reads thus;

"468. Forgery for purpose of cheating.— Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

12.4 Section 471 is as follows;

"471. Using as genuine a forged document or electronic record.—Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he

knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.” 5.5 Now, so far as the offence under Section 420 of the IPC is concerned, “whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person,.....” shall be said to have committed the offence of cheating and shall be punished. Cheating is defined under Section 415 IPC, which reads as under:-

415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.”

13. The main allegation in the complaint was that the land in question was purchased by the father of the complainant on 17.11.1960 from one Maganbhai Chhibabhai which came to be certified in the village Form No.6 on 12.06.1961 vide Entry No.2947 and he was an absolute owner and occupant of the said land. He died in the year 1984 and during his life time, the father of the complainant has not executed any deed in favour of anyone in respect of the said land. However, the present applicant-accused has created a bogus power of attorney in his name in respect of the land in question by forging the signature of the father of the complainant. The said forged power of attorney has been executed in the year 2005 despite the fact that the father of the complainant died in the year 1984. It also appears that the applicant-accused, along with

the other co-accused, have hathed a criminal conspiracy to grab the valuable land of the complainant which is evident from the sale deed itself. The stamp paper was purchased by Labhuben Gordhanbhai Patel in the month of July, 2005 and the sale deed was executed in the month of May, 2005, i.e, two months prior to the purchase of the stamp paper. It further appears that after executing the power of attorney, the applicant-accused has sold out the land in question to the other co-accused, namely, Labhuben Gordhanbhai Patel. Learned advocate for the applicant has put much emphasis on the receipts issued in favour of Panchabhai and Chandrikaben to substantiate his argument that the present applicant-accused has not gained any monetary benefit from the said transaction and it was Panchabhai and Chandrikaben who have received the entire amount of sale consideration. However, as against this, learned advocate for the complainant has placed on record the opinion of the handwriting expert of a private agency wherein it is opined that the signatures of Panchabhai and Chandrikaben on the said receipts are also forged one. Therefore, *prima facie*, it reveals that to shift the entire burden upon Panchabhai and Chandrikaben, the applicant-accused along with the other co-accused have created the forged receipts. Learned advocate also submitted that the applicant is having past antecedents. It also reveals that pursuant to filing of complaint by the power of attorney holder of other co-sharer of the land, then the complainant came to know about the said forgery committed by applicant-accused by executing forged power of attorney in respect of the land of the land in question. The materials available on

record shows that all the accused persons are the habitual offenders in committing such type of offences. They are hand in glove with each other. Over and above the same, the original power of attorney has yet not been produced by the applicant-accused before the Investigating Officer or before the court of law.

14. Now, so far as the offence under Section 465 is concerned. As per Section 465, "whoever commits forgery shall be punished for the offence under Section 465". Forgery is defined under Section 463, which reads as under:-

"463. Forgery.—Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

15. Therefore, as per Section 463, "whoever makes any false documents, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed", he is said to have committed the offence of forgery. Making a false document is defined under Section 464 IPC. Therefore, for the offence of forgery, there must be making of a false document with intent to cause damage or injury to the public or to any person. Therefore, making the false documents is sine qua non. In the present case, *prima facie*, it appears that the allegations levelled against the applicant-accused are very serious in nature that

he has created a false and fabricated power of attorney of a dead person. The mystery as to whether who is having the original power of attorney is still unraveled which may come on surface during the course of full fledged trial and recording of evidence. Therefore, at this stage, I am not inclined to entertain the present application as the entire case hinges upon the documentary evidence and, therefore, this Court has to keep in mind the aspect of tampering and hampering with the prosecution witnesses and the evidences.

16. Now, so far as the offences under Sections 467 and 468 IPC are concerned, I am of the *prima facie* view that no case is made out for grant of bail looking to the ingredients of Sections 467 and 468 of IPC coupled with the allegations made in the FIR. Section 467 is with respect to forgery of valuable security, will etc. Section 468 relates to forgery for the purposes of cheating. Section 471 will be applicable in case of using as genuine a forged document. So far as Sections 201 and 120(B) are concerned, it *prima facie* appears that the applicant-accused, in collusion with the other co-accused, hatched a criminal conspiracy to grab the valuable land of the complainant by executing a forged and fabricated power of attorney and, thereafter, by not producing the same before the court of law or before the Investigating Agency which creates doubt that the applicant-accused might have destroyed the said power of attorney.

17. 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 the court to analyze the seriousness of the offence and determine if there is a need for custodial interrogation.

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

19. In view of what has observed herein above, I am not inclined to exercise my discretion in favour of the applicant-accused. Consequently, the present application fails and is hereby rejected. Rule is discharged.

(DIVYESH A. JOSHI,J)

VAHID