CNR NO. GANG010018642022

Presented on	: 03.10.2022		
Registered on	: 04.10.2022		
Reserved on	: 09.03.2023		
Decided on	: 18.03.2023		
Duration :	Days	Months	years.
	14	05	--

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, NORTH GOA, MAPUSA.

(Before: Smt. Sharmila Patil, Additional Sessions Judge, FTC, North Goa, Mapusa)

Anticipatory Bail Appl. No.236/2022

Mr. Vikrant Balkrishna Shetty,

s/o. Balkrishna Shetty, age 44 years,

House No.175/8, Shantinagar,

Ponda, North Goa. ... Applicant.

Versus

1. SIT (Land Grabbing)
   (Through Police Inspector)
   Crime Branch,
   Ribandar, Tiswadi Goa.

2. Public Prosecutor,
   North Goa Sessions Court,
   Panaji-Goa. ... Respondents.

Applicant represented by learned Advocate Shri. V. Noronha.

Respondents represented by learned Public Prosecutor Shri R. Barreto.

O R D E R

(Delivered on this the 18th day of the month of March of the year, 2023)

1. This is an application for Anticipatory Bail under Section 438 of the Code of Criminal Procedure (in short, the Cr.P.C.).

2. **Case of the applicant:-** That the applicant is a permanent resident at the address mentioned in the cause

title and is residing within his elderly parents and his wife and a minor daughter.

3. That the applicant was the owner of factories and in the year 2018 he sold his factories and entered into Real Estate Business along with his business partner Mr. Mubashir Shah and they used to invest in properties and resale them for prospective purchasers. That in the year 2020, he came across one Mr. Mohammad Suhail @ Michael Fernandes and Mr. Rajkumar Maithri with an offer of availability of properties situated within the jurisdiction of village Panchayats of Anjuna and V. P. Assagao.

4. That some of the properties were owned by Mr. Caetano Fernandes and his family as per the documents shown to the applicant by said Caetano Fernandes, Mohammad Suhail and Rajkumar Maithri. Accordingly, the applicant alongwith his partner purchased some of

the properties from Mr. Caetano Fernandes and his family. That in the year applicant learnt about the civil suit being instituted challenging the title of the properties sold by Mr. Caetano Fernandes and his family wherein it was agitated that the Deeds/documents of title shown by Mr. Caetano are false and fabricated documents.

5. That upon being learning about the said fabrication of documents, the applicant lodged police complaints before the Economic offence Cell dated 01.04.2022 and 13.04.2022 for necessary action against the persons named in the said complaints. That he is the first whistle blower in the present land scam cases being investigated by the respondent no.1.

6. That the applicant was arrested by the respondent no.1 in Crime No.54/2022 under Sections 419, 420, 465, 467, 471 r/w 120(B) of IPC.

7. That the applicant was ordered to be released by the Hon'ble Judicial Magistrate First Class at Mapusa in Bail Application No.214/2022 by Order dated 26.04.2022. However, the applicant was not released as he could not fulfill the conditions laid down in the Order.

8. That the applicant challenged the aforesaid Order of the Hon'ble JMFC, Mapusa and the same was registered as CRMA 77/2022 before this Hon'ble Court. That by Order dated 19.07.2022 the application/CRMA filed by the applicant was granted and the applicant was released from the Judicial Custody. The present alleged complaint is connected to crime no.54/2022 which was disposed by this Hon'ble Court.

9. The applicant has adhered to all the conditions laid in the Order of the Hon'ble JMFC and the Sessions Court. the applicant has reported at the office of the respondent no.1 and have time to time visited and

felicitated with the investigation on every occasion respondent no.1 directed the applicant to remain present at their office and have given all the documents which were in his possession and have disclosed every information as required and which was within the knowledge of the applicant. The applicant have always made himself available as and when asked by the respondent no.1.

10. That yesterday while the applicant was out of house, persons visited his house and informed that they are attached with the respondent no.1 and had come to take the applicant to their office. Said persons did not disclosed if there is any offence registered against the applicant. That yesterday in the evening, the applicant learnt through digital media name Digital Goa News that the applicant is booked on a complaint filed by Mr. Caetano Fernandes for cheating.

11. That there is no reason for registering of the said alleged complaint as against the applicant as applicant has not cheated the said Caetano or his family member on the contrary it's the applicant and his partner who are being cheated by the said Caetano Fernandes and others as mentioned in his complaints.

12. That the applicant has reasons to believe that he is being falsely implicated in the complaint and that he may be arrested for the offence which he has not committed or has got anything to do with the said alleged complaint. The family members of the applicant are not informed about the details of the crime as such he is unable to disclose the crime number under which he has been allegedly booked by the respondent no.1.

13. The applicant is innocent and has not involved in the alleged crime in any manner and is being falsely implicated by the said Caetano Fernandes and his family

and the persons whose names are reflected in the complaints filed by the applicant. That there is no necessity of custodial interrogation and more so the applicant is not connected in the alleged crime or has any direct or indirect role which warrants his custodial interrogation. The applicant shall co-operate in every manner in the investigation which he has always been doing since his release. That the applicant has not filed any other similar application nor is the same pending in any part of India.

14. **<u>Case of the respondent:-</u>** That vide Order No.2/166/2013-HD(G)/6953 dated 15.06.2022 Government of Goa, Department of Home (General), Secretariat, Porvorim-Goa has constituted Special Investigation Team to investigate enquire various complaint/FIR regarding illegal Land transferred/Land grabbing by way of forged documents.

15. On 01.10.2022 at 16.28 hours, an offence stands registered upon the complaint of Mr. Caitano Fernandes R/o. H. No.271, Agapur Ponda that prior to 12.04.2022 at TNK at Mapusa Bardez Goa accused Mr. Vikrant Shetty R/o H. No.175/8, Gopal Krishna Nivas, Shantinagar, Ponda Goa dishonestly induced the complainant that he would transfer some of his properties in complainant's and his family name and further later had to transfer the said properties back in his name on the pretext of accused having family disputes. Further accused promised the complainant of paying lumpsum amount to which complainant genuinely believed.

16. Further accused person succeeded in wrongfully transferring the properties from Bardez Taluka belonging to others to prospective customers through complainant and his family and also withdrew the consideration amount which was credited in complainants mother's

bank account thereby cheated the complainant and his family. In this regard an offence vide Crime Branch P.S. Crime No.95/2022 u/s 420 IPC stands registered at SIT Crime Branch Ribandar. During the course of investigation the applicant/accused was issued a 41-A Cr.P.C. notice on 01.10.2022 which was duly served to the applicant on 05.10.2022 through his brother Vishwas Shetty to remain present for the purpose of investigation on 06.10.2022 at 11.00 hrs.

17. That during the course of investigation received anticipatory bail application of the accused/applicant through his Advocate on 04.10.2022. That in his anticipatory bail application at para no.2 that he entered into real estate business alongwtih his business partner Mr. Mubashir Shah and they used to invest in properties and resale them for prospective purchasers. That during the course of investigation it is revealed that upon checking online on National generic Document

Registration System (NGDRS) i.e. https://ngdrsgoa.gov.in conveyance Deeds registered in respect of the property bearing survey no.426/15 of Anjuna Village a two Deeds of conveyance are registered 1st was registered vide Deed no.BRZ-1-2171-2020 dated 11.09.2020 for a consideration amount of Rs.72,00,000/- (Seventy Two Lakh Rupees only) and second was registered on 22.04.2021 vide Deed No.BRZ-1-1749-2021 for a consideration amount of Rs.70,00,000/- (Seventy Lakh Rupees only) which is shocking as the same is sold for less price and purchased at higher price by the accused/applicant (which is not an ideal investment for business and raise doubt).

18. That the complainant in his application at para no.3 states that he came across one Mr. Mohammad Suhail @ Michael Fernandes and Mr. Rajkumar Maithi with an offer of availability of properties situated within the jurisdiction of Village Panchayat Anjuna and Assagao.

That the applicant is accused and the above named Mr. Muhammed Suhail and Rajkumar Maithi are accused in Crime Branch PS Cr. No.54/2020 u/s 419, 420, 465, 467, 471 r/w 120(B) IPC.

19. That the applicant in his present application at para no.4 that the complainant in the present crime alongwtih Mr. Mohammad Suhail and Rajkumr Maithi showed the applicant property documents and accordingly he and his partner purchased properties from the complainant in the present crime. However, it is revealed from the RBL bank Account statements of the complainant's mother namely Luisa Fernandes, aged 84 years that the applicant/accused withdrew all the amount transferred by his partner Mr. Mubashir Shah and one Mrs. Kashmira Mubashir Shah all amounting to Rupees 45,00,000/- (Forty five lakhs Rupees only) credited during the period 02.07.2020 to 23.11.2020. It is also noted that the said amount was withdrawn (in form of cash or RTGS

transaction in favour of accused/applicant bank account) on the same day or the very next day of each transaction by using the signed cheque's obtained from the aged complainant's mother, which is evident that applicant/accused used the aged mother of the complainant and her family for wrongful gain.

20. That during the course of investigation it is revealed through the statement of the complainant that the accused/applicant and the complainant in the present crime were friends for about 20 years and that the accused/applicant knew the complainant and his family. Further the accused/applicant taking advantage of the fact that the complainant and his family is not well conversant with English to read and understand the documents and deceived the complainant to help him transfer his properties in complainant and complainant's family name on the pretext of accused having family dispute and further on the pretext of preparing required

documentation made the complainant to execute the Deed of Succession for being the only legal her of his father late Antonio Fernandes to which the accused/applicant himself is a witness wherein the accused very well knew that the complainant in the present case had four other sibling namely 1. Sebastiao Fernandes, 2. Santan Fernandes, 3. Mrs. Magdalena Fernnades, 4. Bridgit Fernandes which is evident that the accused/applicant.

21. That during the course of investigation the accused/applicant was issued 41-A Cr.P.C. notice on 01.10.2022 to comply with all the terms and of the notice and to remain present before the investigating officer on 06.10.2022 the same was served to the applicant/accused through his brother namely Mr. Vishwas Shetty. However, the applicant failed to comply the notice and did not attend for the purpose of investigation and is not co-operating with the investigation.

22. That the accused/applicant in his application at para no.13 stated that on the day prior to filing the present application, persons attached to respondent no.1 visited his house to take him to respondents office which is not true as the investigating officer had already issued notice u/s 41-A Cr.P.C. on the same day after the registration of the present crime to remain present at 11.00 hrs on 06.10.2022.

23. That at para no.15 he is cheated by the complainant in the present crime, also applicant/accused person stated in this present application at para 16 that he is falsely implicated however, the withdrawals of Rs.45,00,000/- (Rupees forty five lakh only) from the complainant's mother's RBL Bank account in favour of the accused/applicant suggest otherwise.

24. That original POA of complainant's wife and mother in favour of complainant in the present crime is

in the possession of the accused/applicant which was used in the above crime which needs to be recovered. That original PAN card of the complainant's aged mother is in possession of the accused/applicant which was used by the accused/applicant and same need to be recovered. That the original MOU signed by the complainant and complainant's family with the accused/applicant are in possession of the applicant and same need to be recovered.

25. That the original passbooks of the complainant, complainant's wife and complainant's mother of RBL Bank Panaji branch were taken by the applicant/accused and same needs to be recovered. That the original cheque book alongwith signed cheque of the complainant's aged mother namely Luiza Fernandes which was taken by accused/applicant using which the applicant/accused was successful in withdrawing cash and do RTGS transaction in favor of accused/applicant all amounting to 45 lakhs

without the knowledge of the account holder. That the accused/applicant is very notorious and is involved in white collar crimes related to Land grabbing.

26. That entire role of the accused/applicant is to be established and it appears that there are possibilities that the accused person may also be involved in transferring the properties by means of forgery and it appears that more persons are involved in the commission of the above crime.

27. That the investigation of the said crime is in initial stage and the accused/applicant was asked to remain present for investigation as per the 41-A Cr.P.C. notice served to him however, he has failed to comply the same. That more evidence in the present crime is needed to e collected which is likely to reveal that the accused/applicant is involved in transferring landed properties in Anjuna, Assagao and Calangute owned by

others to prospective purchasers fraudulently using the names of complainant and complainant's family by using forged documents. That the custodial interrogation of the applicant is required in order to recover the relevant original documents as mentioned at para no.13, 14, 15 and 16.

28. **<u>Additional Say of the respondent</u>:-** That the complaints dated 01.04.2022 dated 13.02.2022 were forwarded to SIT(LG) by the Economic Offence Cell on 12.07.2022 and same are pending enquiry. During the course of investigation the applicant/accused was issued a 41-A Cr.P.C. notice on 01.10.2022 which was duly served to the applicant on 05.10.2022 through his brother Vishwas Shetty to remain present for the purpose of investigation on 06.10.2022 at 11.00 hrs. However, he failed to remain present and comply with the notice.

29. That the accused/applicant was issued another notice u/s 41-A Cr.P.C. notice on 07.10.2022 to remain present for investigation purpose on 12.10.2022 at 11.00 hrs. On 11.10.2022 during the filing of the Say in the present application the accused was informed that the crime number mentioned in the 41-A Cr.P.C. notice issued to him should be treated as 95/2022 u/s 420 IPC. However, the applicant/accused again failed to remain present on 12.10.2022. Further, again on 12.10.2022 the applicant/accused was issued another (3rd notice) 41-A Cr.P.C. Notice to remain present at SIT(LG) Crime Branch for investigation at 11.00 hrs on 17.10.2022, however, the accused applicant again failed to remain present and comply the 41-A Cr.P.C. notice.

30. That the accused applicant is not co-operating with the investigation of the crime and so far failed to comply with all three notices issued to him u/s 41-A Cr.P.C.That

the custodial interrogation of the applicant is required in order to recover the relevant original documents.

31. Heard Ld. Advocate Shri V. Noronha for the applicant and Ld. P.P. Shri R. Barretto for the respondents.

32. I have gone through the records and the proceedings and the rival contentions and the submissions.

33. The law on the Anticipatory Bail Application is settled in **Shri Gurbaksha Singh Sibbia and others Vs. State of Punjab [(1980) 2 SCC 565]** wherein the Constitutional Bench of the Hon'ble Apex Court observed that in regard to the anticipatory bail, if the proposed accusation appears to stem not from the motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, direction for the

release of the applicant on bail in the event of arrest would generally be made.

34. It further observed that on the other hand if it appears likely considering the order of anticipatory bail he will flee from justice, such an order would not be made but the converse of this propositions is not necessarily true. It further observed that there are numerous considerations, the combine effect of which must weigh with the Court while granting or rejecting Anticipatory Bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tempered with and the larger interest of the public or the state are some of the considerations which the Court has to keep in mind while deciding an application for anticipatory bail. The Hon'ble Apex Court further observed that the

question whether to grant bail or not, for its answers upon variety of circumstances, the cumulative effect of which must enter into the judicial verdict.

35. The Hon'ble Apex Court further laid down certain factors and parameters to be taken into consideration while dealing with anticipatory bail, out of which one is the nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made, the second being the possibility of the accused likelihood to repeat the similar or other offences and more importantly is the impact on the grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people. The Hon'ble Apex Court also observed that the Court is required to consider reasonable apprehension of tempering of the witness or apprehension of the threat to the complainant and thus, a balance has to be struck between two factors namely no prejudice should be

caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused. The same ratio is also reiterated in **Siddharam Satlingappa Mhetre (supra) and Sushila Agarwal (supra).**

36. It is well settled that the custodial interrogation is qualitatively more elicitation oriented then questioning a suspect who is well ensconced with a favorable Order under Section 438 of the Code.

37. It is equally well settled that the nature of the offence needs to be kept in mind, whether the investigation will be hampered is also a factor to be considered. Whenever the offence of forgery is committed and the forged documents are used before the authority it is always desirable to make investigation in the allegations and when a person is protected by the Order of anticipatory bail and he is interrogated, such interrogation is never effective. It is therefore always

necessary to keep in mind that police has statutory powers of investigation and the Court is expected to take care and see that there is no interference in the exercise of that power of police and if relief of anticipatory bail is granted, the entire purpose behind the investigation gets frustrated.

38. Applying these principles to the facts of the present case, it is seen that on 01.10.2022 at 16.28 hours, an offence stands registered upon the complaint of Mr. Caitano Fernandes to the effect that the applicant dishonestly induced the complainant that he would transfer some of his properties in complainant's and his family name and further later had to transfer the said properties back in his name on the pretext of applicant having family disputes. Further applicant promised the complainant of paying lumpsum amount to which complainant genuinely believed.

39. From the Say of the respondent no.1 it would show that the complainant and the applicant were friends for about 20 years and that the applicant knew the complainant and his family and further by taking advantage of the fact that the complainant and his family are not well conversant with English to read and understand the documents deceived the complainant to help him transfer his properties in complainant and complainant's family name on the pretext of applicant having family dispute and further on the pretext of preparing required documentation made the complainant to execute the Deed of Succession for being the only legal her of his father late Antonio Fernandes to which the applicant is a witness wherein the accused very well knew that the complainant in the present case had four other sibling namely 1. Sebastiao Fernandes, 2. Santan Fernandes, 3. Mrs. Magdalena Fernnades, 4. Bridgit Fernandes which is evident that the accused/applicant.

40. The Ld. P.P. has urged that the custody of the applicant is required so that the original POA of complainant's wife and mother in favour of complainant which is in the possession of the applicant which was used in the crime can be recovered. Further, the Ld. P.P. has also urged that the original PAN card of the complainant's aged mother is in possession of the applicant which was used by the applicant and same need to be recovered. It is also urged by the Ld. P.P. for the State that the original MOU signed by the complainant and complainant's family with the applicant are in possession of the applicant and same need to be recovered.

41. No doubt, the applicant has himself filed complaints against the complainant but from the Say of the respondent no. 1, the direct involvement of the applicant in the present offence is manifested and therefore, I agree with the arguments of Ld. P.P. for the

State that the custody of the applicant may be required to investigate into the present offence.

42. The applicant has not complied with the Section 41-A Cr.P. C. notice which was duly served upon him by the investigating officer which implies that he has not co-operated with investigation. Thus, to my mind, the offence is grave and requires investigation for which the investigating officer may require the custody of the applicant. It is further seen that the offence is prima facie made out and there is nothing on record to show that the FIR is false or is filed to malign the image of the applicant.

43. In view of the above discussion, to my mind, the applicant is not entitled for anticipatory bail and therefore, the same stands rejected.

Pronounced in the open Court.

SHARMILA PATIL

Digitally signed by SHARMILA PATIL
Date: 2023.03.18 05:37:03 -0700

(Sharmila A. Patil)
Addl. Sessions Judge,
FTC, North Goa,
M A P U S A.

Us*