



सत्यमेव जयते

**IN THE COURT OF 2ND ADDITIONAL SESSIONS JUDGE,
SURAT.**

CRIMINAL MISC. APPLICATION (ANTI.) - NO. 6150 OF 2023

Applicant : Nareshbhai Arjanbhai Devani

Aged about - 54 years, Occupation: Business,

Residing at : B/29, Trikam Nagar, L. H. Road, Varachha,
Surat.

VERSUS

Opponent : State of Gujarat

Application to Grant Anticipatory Bail u/s.438 of Cr.P.C.

(Varachha Police Station - C.R. No. 11210060231978/2023)
(Offence u/s. 402 and 114 of Indian Penal Code)

For Applicant / Accused :- Ld. Advocate Mr. M. D. Zaveri.

For Opponent :- Ld. APP Mr. K. D. Khairnar.

-:: J U D G E M E N T ::-

1. The present application has been filed under Section-438 of Cr.P.C., seeking anticipatory bail in connection with F.I.R. bearing C.R. No.11210060231978/2023 registered with Varachha Police Station under Section-402 and 114 of I.P.C.
2. It is the case of the prosecution that present applicant and co-accused has launched one scheme namely Pam Rivera Farm House to be constructed in block No.218, 219, 237 and 224 at Village Karakhat, Jalalpore, Navsari and accepted Rs.81 Lakhs from the original complainant for the booking of so called farm houses and entered into a notarized agreement with original complainant and his brother Ravibhai Bhagwandas and his aunt Meenaben Ashokbhai and thereafter, present applicant is willfully denied to comply with the conditions of the so called sale-agreement and has not handed over the possession of the so called farm house of the complainant and others and thereby caused cheating and breach of trust with the original complainant. Hence, the present applicant is arrayed as an accused in the present offence.
3. Ld. Advocate for the applicant has vehemently submitted that the applicant is innocent and he has not committed any offence in any manner. Unnecessarily the present applicant has been arrayed as an accused. It is further submitted that if the police will arrest the present applicant, his reputation will tarnish in the society. It is stated that the applicant is having

responsibility of maintaining his family and due to this case, the applicant is facing so much problems in his life. The present applicant is permanent resident of above mentioned address and he will not try to hamper the evidence and influence the witness of the case and will support the further investigation. Ld. Advocate for the applicant has relied upon authority of Hon'ble Apex Court in case of **2011 (1) SCC 694, *Siddhram Satlingappa Mhtre vs. State of Maharashtra***, wherein they have been granted bail. Hence, it is submitted that the application for anticipatory bail be granted in favor of applicant-accused.

4. *Per contra*, Ld. A.P.P. has vehemently opposed the present anticipatory bail application and has submitted that custodial interrogation of the present applicant is very much required in the matter. It is further submitted that the applicant has cheated the original complainant with huge amount of money which directly affects the public at large, hence, it appears that there is *prima facie* case against the present applicant. Under all the circumstances, it is prayed that present anticipatory bail application must be rejected.
5. I have heard the Ld. Advocates for both the sides. I have perused FIR and affidavit filed by the Investigating Officer and the affidavit filed by the complainant vide Exh.4. I have also considered the judgment cited by and relied upon by the Ld. Advocate on behalf of the applicant-accused. Also gone through the police papers and other materials produced on

record.

6. At this juncture Court is not supposed to analyze evidence deeply, produced on record but prosecution has to show his prima-facie case against the present applicant-accused. Considering the facts of the present application and perusing affidavit of IO, police papers and other materials placed on record. It transpires that original complainant has made specific allegations against the present applicant in his complaint and stated that he along with other witnesses had booked farm house in the project of the present applicant, entered into the agreement and also paid amount towards it, which is supposed to constructed in block No.237 of the disputed land. Though, the present applicant has willfully avoided to comply with the conditions of the agreement and not allotted the farm house as booked by the original complainant and thereby caused cheating against the original complainant.
7. Perusing the complaint and the police papers produced on record. The applicant-accused has himself admitted the fact regarding the so called agreement between the original complainant and present applicant, booking for the farm house in his project and the payment received by him as alleged but he has raised the defense that the original land owner of the block No.237 has not executed sale-deed in his favour and sold the land to some other person instead of the present applicant and therefore, he is unable to fulfill the agreement

executed between present applicant and original complainant.

8. Thus, it reveals from the record and the statement made by the applicant-accused himself that he has booked the farm houses for the original complainant and others, supposed to be constructed in block No.237 of the disputed land, without having the ownership of the so called land and accepted the money also for the land of which sale-deed was not executed in his favor at that time. Therefore, prosecution has successfully established strong prima-facie case against the applicant. The defense raised by him that the original land owner has not executed sale-deed in his favour is not considerable, at this stage as the present applicant has failed to produce any document to show that he has initiated any legal proceeding against the original land owner or has lodged an FIR against him. Present applicant has produced some documents before this Court that he is supposed to produce before the investigation agency for a fair investigation. Therefore, custodial interrogation and physical presence of the present applicant is required before the investigation agency. If the anticipatory bail is granted to the present applicant-accused it may affect the case of prosecution adversely therefore, considering the facts and circumstances and the case put by the prosecution and considering the landmark judgments of Hon'ble Supreme Court and Hon'ble High Courts, I do not deem it fit to grant the anticipatory bail in favour of present applicant-accused. Hence, in view of the aforesaid facts and circumstances and in the interest of justice, I pass following order :

:: O R D E R ::

- The present Anticipatory bail application No.6150 of 2023 is

hereby rejected.

- Yadi be sent to concerned Police Station.

Pronounced in open court today on this 29th Day of August, 2023.

Surat

29/08/2023

(Dr. V. C. Maheshwari)

2nd Additional Sessions Judge,
District & Sessions Court, Surat
(Unique ID Code: GJ00605)