

**BEFORE THE CITY CIVIL & SESSIONS COURT,
AT AHMEDABAD**

Criminal Misc. (Anticipatory) Application No.642/2022

- Applicants:**
- 1.** Mukund Dattatray Kurne,
Age : 50 years, Gender: Male,
Residing at : A/303-304, Monarch Castle,
Hanuman Road, Parle Tilak School,
Vileparle East, Mumbai.
 - 2.** Sumitkumar Rameshbhai Bodra
Age : 31 years, Occu: Gender: Male,
Residing at : 701-702, Anagram Building,
Rajahans Swapna, Varrachha Road, Surat.

Criminal Misc.(Anticipatory) Application No.643/2022

- Applicant:**
- Nilamben Sumitbhai Bodra
Age : 30 years, Female,
Residing at : 701-702, Anagram Building,
Rajahans Swapna, Varrachha Road, Surat.

Criminal Misc.(Anticipatory) Application No.644/2022

- Applicant:**
- Jigneshkumar Pravinbhai Hirapara
Age : 32 years, Occupation: C.A.,
Residing at : B-30, Gajanand Soci., Yogi Chowk,
Punagam, Surat.

Versus

Opponent : The State of Gujarat

Appearance :

Learned advocate Mr. M.R. Maruti for bail application no.642/2022
Learned advocate Mr. P.M. Lakhani for bail application no.643/2022
Learned advocate Mr. V.J. Dave for bail application no.644/2022
Learned P.P. for the opponent - State.

COMMON ORDER BELOW EXH.1.

- 1.** The applicants-accused of Criminal Misc. Application No.642/2022
Criminal Misc. Application No.643/2022 & Criminal Misc. Application
No.644/2022 have preferred application under Section 438 of Criminal

Procedure Code to get Anticipatory bail for the offence registered at Naranpura Police Station, I-C.R. No.11191034220124/2022 under Section 406, 420, 477-A, 120(B) and 114 of IPC read with section 66(D) of the Information Technology Amendment Act, 2008 read with section 447 of the Companies Act. on suitable terms and conditions. The common law and facts being involved in all the applications are same and one, therefore, to avoid repetition of facts and to save time of the Court, all the applications are being dealt with and decided by this common order.

2. The Id advocate for bail application no.642/2022 and bail application no.643/2022 has argued that the offence alleged u/s 406, 420 477-A 120(B) and 114 of IPC read with section 66(D) of the Information Technology Amendment Act, 2008 read with section 447 of the Companies Act is registered against applicants-accused. He has argued that the accused of bail application no.643/2022 is a lady. He has argued that the accusations against applicants are that they have not filed return. He has argued that in the year 2018 the Income Tax Department had conducted raid and it was unearth Havalakand and pursuant thereto, case under Money Laundering Act was registered by Enforcement Directors in the year 2018 against one Chinese citizen. He has argued that in the year 2018 there is no name of the accused and there is no inquiry/investigation is pending of Enforcement Director in Delhi case. He has argued that charlie peng @ lau sang i.e. Chinese company and the applicants having no any kind of transaction. He has argued that till now no action has been initiated by the Enforcement Directors. He has argued that applicants have produced documentary evidence to show that the same name of the company of present applicants namely Savariya International Pvt. Ltd. is in Delhi. He has argued that similar name of the company of the applicants is situated at Delhi due to similar name, the action has been initiated against them in lieu of Savariya company of Delhi, the applicants have no concerned with the Chinese company. He has argued that there is no nexus and no transaction with the Chinise company. He has argued that Nilamben i.e. applicant of bail application no.643/2022 had been joined as

director in Savariya International, Surat as a director from 23/01/2017. He has argued that the inquiry under Company Law is going against present applicants. He has argued that looking to the FIR, there is no ingredients of section 406 of IPC as who had committed the breach and who had put trust are nothing has been mentioned. He has argued that in section 406 of IPC the provision of punishment is three years. He has argued that there is no any kind of ingredients of cheating. He has argued that there is no any kind of entrustment as such there is no any kind of cheating and there is no misuse. He has argued that the maximum punishment u/s 420 of IPC is up to seven years. He has argued that the accusations u/s 477-A, the provision of punishment for false accounts is up to seven years. He has argued that the accusations u/s 447 and 448 of Company Law is summons triable. He has argued that the accusations against applicants about false accounts with a view to shown less expenses in comparison to income and as such false accounts have been shown but applicants are doing cloths trading and not making any production of cloths. He has argued that as per the judgement of Arneshkumar, there is no need to arrest the accused. He has argued that the alleged offence is prior to a lady become a director. He has argued that applicants will remain present before the I.O. therefore, he has requested to allow the present bail application. He has argued that other two directors of bail application no.642/2022 are gents. He has argued that there is no concerned to applicant with havala and Chinese company. He has argued that it has not been clarified that why the company of applicants has been connected with the case for the year 2018 of Delhi. Therefore, he has requested to allow the present bail applications.

3. The Id advocate for the bail application no.644/2022 has argued that the applicant is innocent and he has not committed the alleged offence, he has been falsely implicated in the present case. He further argued that as per the FIR this applicant has been shown as accused no.4. He has argued that this applicant is a Chartered Accountant and he had appointed as C.A and he had audited account for the year 2014-15 and 2015-2016. He has argued

that this applicant is not a director and contended that the role of the C.A. is to audit the accounts. He has argued that in this case the complainant is a Registrar Of Company. He has argued that this complaint has not been filed by the Enforcement Director as well as Bank. He has argued that there is no complaint under the provision of FERA. He has argued that it has not been mentioned in the complaint about how registrar of company is aggrieved. He has argued that this company has been established in the year 2012 by the other C.A. and the documents for the same is produced on record at page no.32 and 33. He has argued that this applicant is appointed as C.A. on 05/09/2016 as a auditor and the applicant has audited account for the year 2015-16 and its report is produced on record at page no.6 and 11. He has argued that this applicant has resigned to the registrar of company and same is produced at page no.12 and the reason is mentioned therein. He has gone through the FIR and argued that it is mentioned in the FIR that this auditor has resigned. He has argued that the report of the company audited by the present applicant is produced on record for the year 2015 at page no.15 onward. He has argued that this applicant has obtained license of C.A. in the year 2014 and same is produced at page no.48. He has argued that job of applicant is to audit the companies. He has argued that as per FIR, there is no case of false accounts and in false accounts Registrar of Company is not aggrieved and there is not mentioned in FIR. He has argued that the neither Bank nor ED has filed complaint. As per the FIR the allegation is from the year 2018. He has argued that the case is rested upon the documentary evidence. He has argued that there is no entry about money has been transferred as well as there is no statement. He has argued that there is no question of custodial interrogation of the applicant. He has argued that the applicant is apprehending his arrest and if he is arrested then he would defame in society. He has argued that the presence of the applicant is easily available. Therefore, requested to allow the application with suitable terms and conditions.

4. The Id. P.P. for the State has argued that all these applications are anticipatory bail applications. He has argued that there is a scam of hawala.

He has argued that as per the FIR, Registrar of the Company is situated at Naranpura. He has argued that main agency is Enforcement Director and it is important agency, which enters it shows that there is some wrong. He has argued that custodial interrogation of the applicants is requested. He has argued that it is a serious offence. Therefore, no anticipatory bail can be granted and requested to reject the application.

5. The Id advocate for the bail application no.642/2022 and 643/2022 has re-argued that E.D. is investigating since 2018 but no action initiated against present applicants by the E.D. He has argued that there is correspondence between 2018 to 2022. He has argued that E.D. has read news and initiated action. He has argued that inquiry under the Company Law is going on. He has argued that documentary evidence is with the Registrar of Company. Therefore, there is no question to tamper. Therefore, requested to allow.

6. I have gone through the police papers as well as heard the learned advocates for both the parties and carefully gone through the documents produced by the applicants concerned. On carefully perusing the police papers, it appears that this complaint had been filed by the Assistant Registrar of the Company. As per the complaint, it reveals that the complainant had received confidential information that Income Tax Department had unearthed hawala-kand with one Chinese company and other cases are filed. The complaint also reveals that pursuant to the news, it came to the light of the Ministry Of Corporate Affairs, Delhi that Savariya International Pvt. Ltd. located at Surat is being running by some Directors and Chartered Accountant and the company was established on 23/07/2012 and after 2015-16 no financial statement had been filed. As per the complaint itself shows that the applicant of bail application no.643/2022 namely Nilamben Bodra had appointed as a director from 23/01/2017. It is important to note that the applicant of bail application no.642/2022 namely Mukund Kurne was appointed as a director on 01/08/2014 and the applicant namely Sumit Bodra was appointed as a director on 23/07/2012. It means they are well convergent

with the affairs of Savaria International Pvt. Ltd. On perusing complaint, which itself shows that the auditor had resigned as a C.A. due to company is irregular for the payment of dues like income tax, GST etc. It is important to note that the Chartered Accountant Jigneshbhai Hirapara had resigned on 29/08/2018. It is important to note that the function of the C.A is to audit the accounts of company as per transactions submitted by the directors of the company. Therefore, in absence of production of the books of accounts as well as other documents, C.A. cannot carried-out the function of audit. It is important to note that the Ld. adv. for bail application no.642/2022 and 643/2022 has contended that there is a Savaria International Pvt. Ltd. company situated at Delhi and the present complainant and other department had joined the company of Delhi based with this Savaria International Pvt. Ltd of Surat, but Savaria company located at Surat and Savaria company located at Delhi has no nexus is not tenable and it is to be investigate by the department concerned. On perusing papers, it appears that Ministry of Corporate Affairs Delhi had written a letter of dated 07/01/2022 to Naranpura police station to register the FIR on the ground mentioned therein. Therefore, the complaint itself shows and suggests that in-spite of huge income, less expenses have been shown by the company as alleged by the complainant. Therefore, considering the facts and circumstances as well as papers on record, I am of the view to allow the bail application no.643/2022, she is being a lady and she had been joined as a director on 23/01/2017. So far as bail application no.644/2022 is concerned, he is a Chartered Accountant and considering the number of documents produced by him, I am of the view to allow this two bail applications. So far as the bail application no.642/2022 is concerned, they are being the directors since long and considering the averments of the complaint about huge income of the company and accounts is concerned, the presence of applicants of bail application no.642/2022 is required. Therefore, considering facts and circumstance of the present case, there is a difference in balance-sheet is to be investigated and as per the facts of the complaint itself shows that there may be a breach of FERA and rules of RBI by the directors of the company. Therefore, contention of the Ld. adv. for

the bail application no.642/2022 that there is no any kind of ingredients of cheating and breach of trust is not tenable looking to the papers. Hence the bail application no.642/2022 is not required to be allowed. Therefore, contention raised by the Id. Adv for the bail application no.642/2022 that there is no ingredients of breach of trust or cheating etc. is not tenable, looking to the accusations levelled against them. There is no need to give detailed findings and elaborate reasons considering the police papers. If I pass detail order, then it will adversely affect and prejudice to the rights of the parties as well as investigation and it amounts to decide trial without recording evidence. Hence, I pass following order.

ORDER

1. The Criminal Misc. Application No.642/2022 is hereby rejected.
2. The Criminal Misc. Application No.643/2022/ **Nilamben Sumitbhai Bodra** & Criminal Misc. Application No.644/2022/ **Jigneshkumar Pravinbhai Hirapara** are hereby allowed.
3. The applicants – accused of bail application no.643/2022 and bail application no.644/2022 are ordered to be released on anticipatory bail in connection with offence registered at Naranpura Police Station I-C.R. No.11191034220124/2022 under Sections 406, 420, 477-A, 120(B) and 114 of IPC read with section 66(D) of the Information Technology Amendment Act, 2008 read with section 447 of the Companies Act, on their executing a personal bond in the sum of **Rs.15,000/- (Rupees Fifteen Thousand only)** each with one local surety of like amount subject to following conditions :-
 - A. The applicants-accused shall not in any manner try to influence the prosecution witnesses or act in any such manner which may be termed as prejudicial to the interest of prosecution;
 - B. The applicants-accused of bail application no.643/2022 and bail application no.644/2022 are directed to appear before the concerned I.O./Police Station on 22/02/2022 between 11:00 to 15:00 hours.
 - C. The applicants-accused shall furnish their precise and correct residential address to the I.O and/or learned Trial Court as the case may be

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before being actually bailed out. They shall also furnish new residential address, in the event of change in their address;

D. The applicants-accused shall not leave the territory of India without prior permission of the Court and shall deposit their Passport, if any, before the I.O., within seven days;

E. The applicants-accused shall regularly remain present in the Court during trial;

F. The applicants shall cooperate the investigating officer in the investigation of the present case and also shall make themselves available for interrogation by the concerned police officer as and when required;

Yadi of this order be sent to the concerned authorities.

G. The applicants of bail application no.643/2022 and bail application no.644/2022 have to remain present on the first day of every month between 10/00AM to 3/00PM before the concerned Police Station till the filing of charge-sheet.

H. It would be open to the Investigating Officer to file an application for remand if he considers it just and proper, then the concerned Magistrate would decide it on merits. If the Court grants remand, then the applicant be treated in the judicial custody for the purpose of entertaining application of police remand. After completion of remand, the accused shall be set free immediately.

Copy of this order be kept with other Criminal Misc. Application No.643/2022 & Criminal Misc. Application No.644/2022

Pronounced in the open Court today on this **14th** day of February **2022**.

Date :- 14-02-2022.
Place:- Ahmedabad.

(Dilipkumar Dhirajlal Thakkar)
Additional Sessions Judge,
Court No.5,
City Civil & Sessions Court,
Ahmedabad.
(Unique I.D. Code No.GJ00405)

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