the evidence on record and has wrongly convicted and sentenced the present appellants - accused for the offences in question, which cannot be ratified and such an error is required to be rectified by this Court, by quashing and setting aside impugned judgment and order. Moreover, the learned Additional Public Prosecutor for the respondent - State is also not in a position to show anything to take otherwise view than the above.

6. in view of the aforesaid discussion, present appeal succeeds and the impugned judgment and order dated 19/02/2002, passed by the learned Additional Sessions Judge, Court No. 9, City Sessions Court, Ahmedabad in Sessions Case No. 107 of 2000, is hereby quashed and set aside. The appellants - original accused Nos. 2 and 3 are acquitted of the charges for which, they are convicted and sentenced. The appellants - accused are reported to be on bail. They need not to surrender to custody, except they require so in any other case and their bail bonds shall stand cancelled accordingly. Registry to return the R&P to the trial Court forthwith. in view of main appeal is allowed, no orders are required to be passed on the Criminal Misc. Applications filed by the appellants and accordingly, they are disposed of.

***Result*:-** Appeal allowed.

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**ABC 2016 (II) 493 GUJ**
**ACQUITTAL & BAIL CASES**
## HIGH COURT OF GUJARAT

(Paresh Upadhyay, J.)

Criminal Misc. Application (For Anticipatory Bail ) No. 26936 of 2016

19 October, 2016

***SUJAN AZAD PARIKH*** ***- Appellant(s).***

***Versus***

***STATE OF GUJARAT & ANR.*** ***- Respondent(s).***

***Law Covered*:-** ***Code of Criminal Procedure, 1973 — Section 438 — Anticipatory Bail — concession of — Indian Penal Code, 1860 — Section 465, 466, 467, 468 & 471 — Offences under — Property dispute — Complainant & accused are blood relatives — Held, grievance, prima facie appears to be that, that arrangement has not worked to the expectation of the complainant sister — Ad-interim***

***injunction denied by court—Held, the criminal proceedings needs to be & is seen in the back ground of dispute —Custodial interrogation not required — anticipatory bail granted. (Para 7)***

***Law of relief:-*** ***Criminal proceedings needs to be seen in the back ground of civil dispute between the parties.***

***Held:-*** Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds that this is a property dispute in the family. The complainant is the sister and the accused is the real brother. From the record it further transpires that, the principal dispute is with regard to the properties of the father, who passed away in the United State of America in the year 1999. Thereafter some family arrangement is stated to have taken place, which was reduced in writing also. The grievance, prima facie appears to be that, that arrangement has not worked to the expectation of the complainant sister. That gave rise to the litigation before the Bombay High Court being Suit No. 462 of 2016. Copy of the plaint of the said suit is already on record. The Bombay High Court, by a reasoned order dated 18.07.2016 refused to grant any interim relief in the said matter. The appeal could be filed against the said refusal of the interim relief before appropriate forum, within the period of limitation. If the date of the said order of the Bombay High Court (18.07.2016) and the date of the present FIR (08.09.2016) is conjointly seen, in substance, instead of filing of such appeal, the FIR in question is filed by the plaintiff - now standing as the complainant. This criminal proceeding therefore needs to be and is seen in that background. Considering the nature of allegations against the applicant, this Court finds that, custodial interrogation of the applicant is not required. Judicial custody would also not be required in the facts of this case. This Court has taken note of the standing of both - the complainant and the accused, their place of residence and the place of alleged offence. This Court has also considered the correspondence exchanged by the complainant- sister and the accused - brother, which is on record, including the correspondence which are personal in nature to some extent and therefore the same are not elaborated in this order. This Court finds substantial force in the submission of learned senior advocate for the applicant that the present criminal proceedings are initiated by the sister in the background which is narrated in her letter dated 21.09.2015. Considering the totality, this Court finds that the applicant needs to be protected in exercise of powers under Section 438 of the Code of Criminal Procedure. (Para 7)

***Counsel:-*** ***For Appellant(s):*** *Mr Shalin Mehta, Sr. Advocate & Mr Salil M Thakore, Advocate.*

***For Respondent(s):*** *Ms Monali Bhatt, APP & Mr R C Jani, Advocate*

***Cases Referred:-***

1. *Satlingappa Mhetre versus State of Maharashtra; (2011) 1 SCC 694.= ABC 2011 (I) 204 SC . (Para 4)*
2. *Kishan Singh versus Gurpal Singh; (2010) 8 SCC 775. (Para 4)*
3. *Shri Vishnu Dutt Sharma versus Daya Sapra; (2009) 13 SCC 729.(Para 4)*
4. *Sudhir versus State of Maharashtra; (2016) 1 SCC 146. (Para 4)*

## ***ORDER***

***PARESH UPADHYAY, J.: -*** 1. This is an application for anticipatory bail.

2. The applicant is named as an accused and apprehends his arrest in connection with C.R.-I No. 69 of 2016 registered with the Varnama Police Station, District : Vadodara (Rural) for the offences punishable under Sections 465, 466, 467, 468 and 471 of the Indian Penal Code.

3. Mr. Shalin Mehta, learned senior advocate for the applicant has stated that, the complainant is the sister and the accused - applicant is the brother. It is submitted that, essentially this is a family / property dispute and the sister has already initiated the civil proceedings in that regard. He has drawn the attention of this Court to the pleadings before the Bombay High Court in the Suit No.465 of 2016, wherein the present complainant is the plaintiff and the present applicant - accused is the defendant. It is submitted that, having failed to get any interim relief in the said matter, the present FIR is filed as an arm twisting tactic. in this regard attention of this Court is invited to the order passed by the Bombay High Court in Notice of Motion (Lodg.) No. 924 of 2016 in Suit No. 462 of 2016 dated 18.07.2016. It is submitted that soon thereafter, the present FIR is filed on 08.09.2016. Reliance is also placed on the correspondence exchanged by and between the complainant - sister and the accused - brother, which is on record. He has submitted that the criminal proceedings are initiated in the background which is narrated in the letter of the sister dated 21.09.2015. It is submitted that the applicant has not committed any wrong and the arrest would only bring social stigma and disrepute to the applicant. It is submitted that keeping in view the

ratio laid down by the Supreme Court of India in the case of ***Siddharam Satlingappa Mhetre versus State of Maharashtra reported in (2011) 1 SCC 694 = ABC 2011 (I) 204 SC*** this application be entertained.

4. On the other hand, Mr. R.C. Jani, learned advocate for the complainant has vehemently opposed this application. He has taken this Court through the narration in the complaint line by line and the documents alleged to have been forged. It is submitted that no protection be granted to the applicant. Reliance is placed on the decisions of Hon'ble the Supreme Court of India in the case of ***(i) Kishan Singh versus Gurpal Singh reported in (2010) 8 SCC 775, (ii) Shri Vishnu Dutt Sharma versus Daya Sapra reported in (2009) 13 SCC 729 and (iii) Sudhir versus State of Maharashtra reported in (2016) 1 SCC 146.*** It is submitted that this application be dismissed.

5. Ms. Monali Bhatt, learned Additional Public Prosecutor has contested this application. It is submitted that this application be dismissed.

6. Before the findings are recorded, it is noted that, since the scope of this application is only grant / refusal of the protection under Section 438 of Cr.P.C., any observation made in this order will have no applicability on other proceedings.

7. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds that this is a property dispute in the family. The complainant is the sister and the accused is the real brother. From the record it further transpires that, the principal dispute is with regard to the properties of the father, who passed away in the United State of America in the year 1999. Thereafter some family arrangement is stated to have taken place, which was reduced in writing also. The grievance, prima facie appears to be that, that arrangement has not worked to the expectation of the complainant sister. That gave rise to the litigation before the Bombay High Court being Suit No. 462 of 2016. Copy of the plaint of the said suit is already on record. The Bombay High Court, by a reasoned order dated 18.07.2016 refused to grant any interim relief in the said matter. The appeal could be filed against the said refusal of the interim relief before appropriate forum, within the period of limitation. If the date of the said order of the Bombay High Court (18.07.2016) and the date of the present FIR (08.09.2016) is conjointly seen, in substance, instead of filing of such appeal, the FIR in question is filed by the plaintiff - now

standing as the complainant. This criminal proceeding therefore needs to be and is seen in that background. Considering the nature of allegations against the applicant, this Court finds that, custodial interrogation of the applicant is not required. Judicial custody would also not be required in the facts of this case. This Court has taken note of the standing of both - the complainant and the accused, their place of residence and the place of alleged offence. This Court has also considered the correspondence exchanged by the complainant- sister and the accused - brother, which is on record, including the correspondence which are personal in nature to some extent and therefore the same are not elaborated in this order. This Court finds substantial force in the submission of learned senior advocate for the applicant that the present criminal proceedings are initiated by the sister in the background which is narrated in her letter dated 21.09.2015. Considering the totality, this Court finds that the applicant needs to be protected in exercise of powers under Section 438 of the Code of Criminal Procedure.

8. So far the reliance placed by the learned advocate for the complainant on the decisions of Hon'ble the Supreme Court of India is concerned, it is noted that none of those decisions would take the case of the complainant any further. It is for the reason that in the case of (i) Kishan Singh (supra) and (ii) Shri Vishnu Dutt Sharma (supra) the issue was, as to what should be the parameter while considering an application for quashing. The present one is not the application for quashing but it is for anticipatory bail. So far the decisions in the case of Sudhir (supra) is concerned, the Supreme Court on facts found that the High Court was justified in cancelling the bail granted by the Court below. That does not lay down any law, which would have any applicability in the facts of this case. On the other hand, the decisions as relied by the learned advocate for the applicant in the case of Siddharam Satlingappa Mhetre (supra) would help the applicant.

9. in view of above, the following order is passed.

9.1 This application is allowed.

9.2 It is directed that, in the event of arrest of the applicant in connection with C.R.-I No. 69 of 2016 registered with the Varnama Police Station, District: Vadodara (Rural), the applicant shall be released on bail on his furnishing personal bonds of Rs.50,000/- (Rupees fifty thousand only) and one surety of the like amount, on the following conditions.

(a) shall co-operate with the investigation and make himself available for interrogation whenever required;

(b) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

(c) shall not obstruct or hamper the police investigation and shall not play mischief with the evidence collected or yet to be collected by the police.

9.3 The Trial Court shall not be influenced by the prima facie observations made by this Court while recording this order.

9.4 Rule is made absolute. Direct service is permitted.

***Result:-*** Bail granted.

**ABC 2016 (II) 498 GUJ**
**ACQUITTAL & BAIL CASES**

## HIGH COURT OF GUJARAT

(P.P. Bhatt, J.)

Criminal Misc. Application (For Regular Bail) No. 27128 of 2016
Decided on 19 October, 2016

***LAKHABHAI ARJANBHAI CHHATRODIYA*** ***- Appellant(s).***

***Versus***

***STATE OF GUJARAT*** ***- Respondent(s).***

***Law Covered:-*** ***Code of Criminal Procedure, 1973 — Section 439 — Regular Bail — Concession of —Indian Penal Code, 1860 — Section 406, 420, 463, 467, 468, 471— Offences under — Matter settled amicably between the parties— No objection to complainant regarding bail—the deed of compromise executed —substantial part of investigation is over— Charge-sheet not filed — no possibility of tampering with the evidence —no criminal antecedents—Applicants enlarged on regular bail. (Para 6)***

***Held:-*** Regard being had to the above submissions and considering the nature and gravity of accusation made against the applicant in the First Information Report and the police papers, as also considering the fact that the substantial part of investigation is over, only charge-sheet is required to be submitted, therefore, there is no possibility of tampering with the evidence, as also considering the