IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 3407 of 2020

==========

DHARMENDRABHAI SAMUBHAI MAKWANA

Versus

STATE OF GUJARAT

==========

Appearance:
MR KIRTIDEV R DAVE(3267) for the Applicant(s) No. 1
MR RAHUL K DAVE(3978) for the Applicant(s) No. 1
MR H K PATEL, APP for the Respondent(s) No. 1

==========

CORAM: **HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI**

Date : 17/02/2020

ORAL ORDER

1. **Rule.** Learned APP Mr. H.K. Patel waives service of Rule on behalf of the respondent State.

2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being **C.R. No. 4 of 2020** (11204065200004) registered with **Vaso Police Station, District : Kheda** for offence under Sections 354A(1)(1) of the Indian Penal Code and Sections 8 and 12 of the POCSO Act.

3. Learned Advocate appearing on behalf of the applicant submits that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

4. Learned APP appearing on behalf of the respondent-State has

opposed grant of regular bail looking to the nature and gravity of the offence.

5. Learned Advocates appearing on behalf of the respective parties do not press for further reasoned order.

6. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

7. This Court has considered following aspects,

(a) Applicant is in jail since 06.01.2020.

(b) Investigation is practically over qua the applicant as remand period is over.

(c) It is submitted by learned advocate for the applicant that prior to registration of the FIR-in-question, on 04.01.2020, another FIR under Section 85 of the Prohibition Act came to be registered against the applicant for the alleged incident which has taken place at 21:00 hours. However, at the relevant point of time, no allegations are levelled against the applicant under Section 354(A) of the Indian Penal Code and Sections 8 and 12 of the POCSO Act. Thereafter, on 05.01.2020, on the next day, FIR-in-question is lodged against the applicant with mala fide intention.

(d) It is also submitted that offence punishable under

Section 354A is bailable offence.

(di) I have considered submissions canvased by learned advocate for the applicant and also perused the material placed on record as well as punishment prescribed for the alleged offence.

Looking to the overall facts and circumstances of the present case, I am inclined to consider the case of the applicant.

8. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra Vs. Central Bureau of Investigation**, reported in **[2012] 1 SCC 40**.

9. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being **C.R. No. 4 of 2020** (11204065200004) registered with **Vaso Police Station, District : Kheda** on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall;

[a] not take undue advantage of liberty or misuse liberty;

[b] not act in a manner injurious to the interest of the prosecution;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave the India without prior permission of the

concerned trial court;

[e] mark presence before the concerned Police Station between 1st to 10th day of every English calendar month for a period of six months between 11:00 a.m. and 2:00 p.m.;

[f] furnish the present address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of the concerned trial court;

10. The authorities will release the applicant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

11. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

12. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(VIPUL M. PANCHOLI, J)

NEHA