IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 527 of 2020

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JAYSUKHBHAI @ JAYESH MANSUKHBHAI BAVARAVA
Versus
STATE OF GUJARAT

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Appearance:
MR ASHISH M DAGLI(2203) for the Appellant(s) No. 1
DS AFF.NOT FILED (R)(71) for the Opponent(s)/Respondent(s) No. 2
MR.L.B.DABHI, ADDITIONAL PUBLIC PROSECUTOR(2) for the Opponent(s)/Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE A.Y. KOGJE**

Date : 14/05/2020

ORAL ORDER

1. RULE. Learned APP Mr.L.B.DABHI waives service of Rule on behalf of the respondent State.

2. The present appeal is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being No.11189008200077 registered with Wankaner Taluka Police Station, Morbi for offence under Sections 376(1), 354(A), 504, 506(2), 509 and 114 of the Indian Penal Code, Section 3(2),(v), 3(2) (va), 3(1), (w)(i) and 3(1) (2) (ii) of the SC-ST Prevention of Atrocities Act and under Section 67 of the Information Technology Act.

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

4. Learned Advocate appearing on behalf of the appellant makes a statement that the respondent no.2 whose phone numbers are mentioned in the FIR has been contacted and intimated about the hearing of the matter today. The office of learned advocate for the appellant shall file an affidavit about the intimation/service of this application to the respondent no.2.

5. On the last occasion i.e. on 12.05.2020, learned APP Mr.DAbhi stated that the respondent no.2 had personally called him and had requested for time. Therefore, the court reasonably presumes that the respondent no.2-complainant is served with the notice of this application and is aware about the hearing of the matter.

6. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.

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

8. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers. Following aspects are considered:-

I. The FIR is registered on 03.02.2020 for the offence which is alleged to have taken place on 04.08.2019.

II. The investigation is over and charge-sheet is filed.

III. Considering the age of the complainant and the allegation leveled in the FIR, the element of consensual relation cannot be ruled out in the FIR itself.

IV. The complainant has narrated the manner in which she is residing separately from her husband and was working under contract along with the appellant and proximity increase.

V. Considered the submissions of learned advocate for the appellant by placing reliance upon the photographs placed on record which indicate the proximity of the appellant and the complainant.

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

10. In the facts and circumstances of the case and considering the nature of the allegations made against the appellant in the FIR, without discussing the evidence in detail, *prima facie*, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the appellant on regular bail.

11. Hence, the present appeal is allowed. The appellant is ordered to be released on regular bail in connection with FIR being No.11189008200077 registered with Wankaner Taluka Police Station, Morbi 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 & shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;

(c) surrender passport, if any, to the Trial Court within a week;

(d) not leave the State of Gujarat without prior permission of the Trial Court concerned;

(e) mark presence before the concerned Police Station once in a month for a period of six months between 11.00 a.m. and 2.00 p.m.;

(f) furnish the present address of his 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 Trial Court;

12. The authorities will release the appellant 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.

13. 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.

14. At the trial, the trial Court shall not be influenced by the observations of preliminary nature qua

the evidence at this stage made by this Court while enlarging the appellant on bail.

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

(A.Y. KOGJE, J)

Girish