IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 12183 of 2020

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HARAM @ BICHU SHEKUBHAI BAMANIYA

Versus

STATE OF GUJARAT

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Appearance:
MR O I PATHAN, ADVOCATE for the Applicant
MS NISHA THAKORE, APP for the Respondent STATE
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CORAM:**HONOURABLE MR. JUSTICE PARESH UPADHYAY**

Date : 18/12/2020

ORAL ORDER

1. This application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with C.R.-I No.77 of 2017 registered with Gomtipur Police Station, Ahmedabad City for the offences punishable under Section 363, 366 and 376 of the Indian Penal Code and Sections 3 and 4 of the Protection of Children from Sexual Offences Act.

2. Rule. Learned Additional Public Prosecutor waives service of notice of rule for the State.

3. Heard learned advocate for the applicant and the learned Additional Public Prosecutor through Video Conferencing.

4. Learned advocate for the applicant has submitted that, the applicant has not committed any offence. Without prejudice to this, it is further submitted that, considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

5. Learned Additional Public Prosecutor for the State has opposed this application.

6. Having heard learned advocates for the respective parties and having considered the material on record and the role of the applicant in the offence in question, this Court finds that, this is the fit case to exercise the discretion to release the applicant on bail, in exercise of powers under Section 439 of the Code of Criminal Procedure, 1973, on certain conditions.

7. Learned advocates for the respective parties do not press for reasons, so that it may not prejudice any of the parties, at the time of trail, however it is noted that, while passing this order, this Court has kept in view the law laid down by the Supreme Court of India in the case of Sanjay Chandra versus Central Bureau of Investigation, reported in (2012) 1 SCC 40.

8. It is noted that the accused was already granted regular bail by this Court vide order dated 13.11.2017 recorded on Criminal Misc. Application No.25525 of 2017. Subsequently, for some reason, the applicant could not remain present before the Sessions Court, at the time of trial which led to issuance of warrant and it led him to jail again. The shifting of Ahmedabad City Sessions Court from Bhadra to Old High Court Campus, and again from Old High Court Campus to Bhadra is one of the factor relevant in this matter. Further the social economic background of the complainant and accused collectively indicate that, it would be too harsh to continue the applicant in jail.

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

9.1 This application is allowed.

9.2 The applicant is ordered to be released on regular bail in connection with C.R.-I No.77 of 2017 registered with Gomtipur Police Station, Ahmedabad City on executing his 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] make himself available at the time of trial.

9.3 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.

9.4 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.

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

9.6 Rule is made absolute in above terms.

(PARESH UPADHYAY, J)

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