IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 939 of 2020

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MUKESHBHAI CHANDUBHAI PADHIYAR

Versus

STATE OF GUJARAT

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Appearance:
MR BH SOLANKI(5353) for the Appellant(s) No. 1
MR CHIRAG H PAREKH(5249) for the Opponent(s)/Respondent(s) No. 2
MS JIRGA JHAVERI, APP (2) for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE R.P.DHOLARIA**

Date : 16/12/2020

ORAL ORDER

[1] This appeal is filed under Section 439 of the Code of Criminal Procedure read with section 14(A) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act for regular bail in connection with an offence being C.R.No.Part-(B)-I-11191015200183 of 2020 registered with Nikol Police Station, Ahmedabad for the offence punishable under Sections 363, 323, 376(A-B), 606(1) of the Indian Penal Code and Sections 3(b), 4, 5(M), 6 of the POCSO Act and Sections 3(2)(5-a), 3(2)(5) and 3(1)(w)(I)(II) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

[2] Learned advocate appearing on behalf of the appellant through video conferencing submits that considering the nature of offence, the appellant may be enlarged on regular bail by imposing suitable conditions.

[3] Learned Additional Public Prosecutor appearing on behalf of the respondent-State as well learned advocate appearing for the

respondent no.2 through video conferencing have opposed grant of regular bail looking to the nature and gravity of the offence.

[4] Having heard the learned advocates for the parties and taking into consideration that (i) after conclusion of investigation, chargesheet has already been filed; (ii) the appellant is having no antecedents as submitted by learned advocate for the appellant; (iii) the appellant is in jail for about last 10 months.

[5] In the peculiar facts and circumstances of the case and considering the nature of allegations made against the appellant in the FIR as well as considering his young age, 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 on condition that the **appellant shall deposit in all Rs. 50,000/- towards compensation to the victim(s) before the learned trial Court in 10 equal installments of Rs.5000/- each and the learned trial Court shall accept the same, failing which, he shall be taken into judicial custody without seeking any cancellation of bail.** Upon deposition of the aforesaid amount, the learned trial Court shall invest the aforesaid amount in long term cumulative FDR subject to the final outcome of the trial and it shall be renewed from time to time keeping open the rights and contentions of the appellant. Hence, the present appeal is allowed and the appellant is ordered to be released on **regular bail** in connection with an offence being C.R.No.Part-(B)-I-11191015200183 of 2020 registered with Nikol Police Station, Ahmedabad on executing a personal bond of **Rs.15,000/-** (Rupees Fifteen thousand only) with one surety of the like amount to the satisfaction of the learned 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 injuries to the interest of the prosecution;

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

[d] not leave India without prior permission of the Sessions Judge concerned;

[e] mark presence before the concerned Police Station on alternate Monday for initial three months and thereafter, on first Monday of every English calendar month, for a further period of three months, between 10:00 a.m. and 2:00 p.m.;

[f] furnish latest 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 trial Court;

[g] deposit in all Rs. 50,000/- towards compensation to the victim(s) before the learned trial Court in 10 equal installments of Rs.5000/- each;

[6] 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. Bail bond to be executed before the learned 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. At the trial, learned 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.

[7] The present appeal is allowed. The order dated 24.06.2020 passed by the learned 8th Additional Sessions Judge, Ahmedabad (Rural), Mirzapur, is hereby quashed and set aside.

[8] Registry to send the copy of the this Order to the concerned Jail Authority through Fax and Email.

(R.P.DHOLARIA, J)

MOHMMEDSHAHID/Tausif