IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 15813 of 2020

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BHARATBHAI BIJIYABHAI BHABHOR

Versus

STATE OF GUJARAT

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Appearance:
JUCKY LUCKY CHAN(8033) for the Applicant(s) No. 1
MR LB DABHI APP for the Respondent(s) No. 1
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CORAM: **HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

Date : 17/12/2020

ORAL ORDER

1. This Application is filed by the Applicant – Accused under Section 439 of the Code of Criminal Procedure for enlarging the applicant on Regular Bail in connection with **I-C.R. No. 11821002200024/2020** registered with Sanjeli Police Station, District Dahod for the offences punishable under Sections 379(A) and 114 of the IPC.

2. Heard learned Advocate Mr. Jucky Lucky Chan for the Applicant and learned APP Mr. LB Dabhi for the Respondent State through Video Conference.

Submission of the Parties:

3. Learned Advocate for the Applicant / Accused has submitted that the Applicant Accused is innocent as he has not taken part in the offence as alleged. He has family roots in the society and therefore, he is not likely to flee away from justice. That he will abide by whatever conditions imposed by the Hon'ble Court. That the charge sheet is filed. He further submitted that the other co-accused has already been

enlarged by the co-ordinate bench, therefore prayed that discretion may kindly be exercised and grant bail to the Applicant Accused.

4. Per contra, learned APP has vehemently opposed the bail application and submitted that there are five similar antecedents against the present applicant. He further submitted that if the Hon'ble Court is inclined to grant bail then in such case strict conditions may be imposed to secure the presence of the Applicant Accused.

Merits of the Case:

5. This court has considered the following aspects:

(a) That in the present case it is an admitted fact that the Applicant accused has come for this Application after the charged sheet is filed.

(b) The co-accused person has already been enlarged on bail by the co-ordinate bench in CRMA No. 17985/2020 dated 10.12.2020, therefore, doctrine of parity is extended.

(c) Further as per catena of decisions of Hon’ble Supreme Court, there are mainly 3 factors which are required to be considered by this court i.e. prima facie case, availability of Applicant accused at the time of trial and tampering and hampering with the witnesses by the accused.

(d) That the learned Advocate for the Applicant has submitted that the Applicant Accused is not likely to flee away.

(e) That the Applicant Accused is in custody since 02.07.2020.

(f) The law laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra v. C.B.I. Reported in (2012) 1 SCC 40,** wherein it is held that bail is a rule and jail is an exception.

6. Having heard the learned Advocates for the parties and perusing the record produced in this case as well as taking into consideration the facts of the case, nature of allegations, gravity of accusation, availability of the Applicant Accused at the time of Trial etc. and the role attributed

to the present Applicant accused, the present Application deserves to be allowed and accordingly stands allowed. The Applicant Accused – BHARATBHAI BIJIYABHAI BHABHOR is ordered to be released on regular bail in connection with the aforesaid FIR upon executing a personal bond of Rs.15,000/- with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that he shall:

(a) 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 any Police Officer or tamper with the evidence.
(b) maintain law and order and not to indulge in any criminal activities.
(c) furnish the documentary proof of complete, correct and present address of his residence to the Investigating Officer and to the Trial Court at the time of executing the bond and shall not change his residence without prior permission of the trial Court.
(d) provide his contact numbers as well as the contact numbers of the sureties before the Trial Court. In case of change in such numbers inform in writing immediately to the trial Court.
(e) file an affidavit stating his immovable properties whether self acquired or ancestral with description, location and present value of such properties before the Trial Court, if any.
(f) not leave India without prior permission of the Trial Court
(g) surrender passport, if any, to the Trial Court within a week. If he does not possess passport, he shall file an Affidavit to that effect.
(h) mark presence at the concerned police station between 11:00 am and 1:00 pm on every 1st day of English Calender month for a period of two years.
(i) shall not enter into Dahod District for a period of one year except for marking presence at the concerned police station.

(j) shall maintain all the rules and regulations framed by the Municipality regarding contemporary status of corona virus/Covid-19, State Government or by any competent authority, including social distancing.

7. Bail bond to be executed before the Trial Court having jurisdiction to try the case. It would be open for the Trial Court concerned to give time to furnish the solvency certificate if prayed for.

8. If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities will release the Applicant forthwith only if he is not required in connection with any other offence for the time being.

9. Rule is made absolute. The Registry is directed to communicate this order by Fax / by E-mail to the concerned Court / Authority.

(DR. ASHOKKUMAR C. JOSHI,J)

Radhika