IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 16360 of 2020

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KAMLESHBHAI AARATBHAI NAYAK

Versus

STATE OF GUJARAT

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Appearance:
JATIN V YADAV(8946) for the Applicant(s) No. 1
MR SURAJ B MATIEDA(10499) for the Applicant(s) No. 1
MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**

Date : 15/12/2020

ORAL ORDER

1. Heard the learned advocates for the respective parties through video conferencing.

2. This application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 for regular bail in connection with FIR registered as C.R.No.I-29 of 2019 with Pavagadh Police Station, District Panchmahals for the offences punishable under Sections 376(2)(n), 363 and 366 of the Indian Penal Code, 1860 and under Sections 4, 6, 12 and 17 of the Protection of Children from Sexual Offences Act, 2012, etc.

3. Learned advocate for the applicant has submitted that the allegations made against the applicant are vague and he has been falsely implicated in the alleged offence. He has further submitted that the applicant has been arrested on 18.09.2019 and has been incarcerated since then. He has also submitted that in the FIR, the complainant has clearly stated that her minor daughter has left the home on her own by saying that she is going to the shop near bus-stand. Thus, he has submitted that Section 363 of the IPC would not be attracted to the facts of the present case. He has submitted that on the alleged date of offence i.e. on 02.07.2019, the applicant had gone to Jamnagar for doing labour work.

He has also submitted that in fact the marriage of the applicant was decided to be solemnized with the daughter of the complainant and the applicant has paid the money pursuant to the same to the complainant as per the customs of their community. He has also submitted that because of greediness of the complainant of getting more money, he had fixed the marriage of his daughter with another person and as the daughter of the complainant was against the said marriage with another person, she ran away from her parental home and went to Jamnagar to the applicant. He has further submitted that the date of the alleged incident is 02.07.2019 and the FIR has been lodged on 22.07.2019 and thus, there is a delay of 20 days in lodging the FIR and that too, there is no sufficient explanation be given for such delay. He has submitted that the accused no.2 has been enlarged on regular bail by the Additional Sessions Judge, Panchamahals at Godhra. Thus, he has submitted that on the ground of parity, the present application may be allowed.

4. On the other hand, the learned Additional Public Prosecutor appearing for 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 a further reasoned order.

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

i) The applicant is in custody since 18.09.2019 ;

ii) The investigation is concluded and charge-sheet is filled;

iii) *Prima facie* it appears that there is a love affair between the applicant and the prosecutrix;

iv) There is a delay of 20 days in lodging the FIR;

v) The accused no.2 has been enlarged on regular bail by the concerned trial court.

7. This Court has taken into consideration the law laid down by the Apex Court in the case of ***Sanjay Chandra v. Central Bureau of Investigation***, [2012] 1 SCC 40.

8. Having regard to the above submissions and in the facts and circumstances of the case and considering the nature and gravity of accusation made against the applicant in the FIR, this Court is of the view that discretion is required to be exercised in favour of the applicant for grant of bail and, since there is no possibility of tampering with the evidence as charge-sheet is already submitted. Moreover, the applicant assures that he will abide by the terms and conditions that may be imposed by the Court and shall not commit any breach.

9. Further I do not intend to go into the merits of the matters and I am persuaded to exercise my discretion in favour of the applicant. The investigation is over and the charge-sheet has already been filed and the trial would take a considerable long period of time.

10. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with C.R.No.I-29 of 2019 with Pavagadh Police Station, District Panchmahals on executing personal bond of Rs.10,000/- (Ten Thousand) with one surety of 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(s), 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;

11. 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.

12. 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.

13. 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 applicant on bail.

14. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent.

15. Registry is directed to intimate the concerned jail authority and the concerned Sessions Court about the present order by sending a copy of this order through Fax message, email and/or any other suitable electronic mode.

16. Learned advocate for the applicant is also permitted to send a copy of this order to the concerned jail authority and the concerned Sessions Court through Fax message, email and/or any other suitable electronic mode.

Sd/- .
(A. S. SUPEHIA, J)

NEHA GUPTA///ABHISHEK