IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 18930 of 2020

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VIJAYBHAI LALJIBHAI CHUDASAMA

Versus

STATE OF GUJARAT

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Appearance:
MR RATHIN P RAVAL(5013) for the Applicant(s) No. 1
MR NIKHIL S VYAS(5663) for the Respondent(s) No. 1
MR. L. B. DABHI, APP for the Respondent(s) No. 1

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CORAM: **HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

Date : 18/12/2020

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 C. R. No. 11198035201514 of 2020 registered with Mahuva Police Station, District: Bhavnagar for the offences punishable under Sections 363, 366, 376(2)(J)(N) and 114 of the Indian Penal Code and Sections 4, 6, 8 and 17 of the POCSO Act.

2. Heard learned advocate Mr. Rathin P. Raval for the applicant and learned APP Mr. L. B. Dabhi for the respondent - State through Video Conference.

2.1 Learned advocate Mr. Nikhil Vyas appeared for the Original Complainant through video conference. The learned advocate Mr. Vays verified and admitted the affidavit filed by the original complainant Ms. Payalben D/o Maganbhai Kalubhai Solanki.

Registry to accept Vakalatnama of learned advocate Mr. Nikhil Vyas for the original complainant and place on record.

Submissions of the Parties:

3. The learned advocate for the applicant - accused has submitted that there was love affair between the accused and victim girl. He further submitted that matter is settled between the accused and complainant now and she stated in the affidavit that she would have no hesitation, if the bail is granted. Further, it is submitted that the investigation is over and charge-sheet is filed and hence, there is no possibility of tampering and hampering with the evidence. Besides, the applicant having only one antecedent.

3.1 The learned advocate for the applicant has submitted that the applicant has family roots in the society and therefore, the applicant is not likely to flee away from justice. That the applicant will abide by whatever conditions imposed by the Court. It is, therefore, prayed that discretion may kindly be exercised and grant bail to the applicant - accused.

4. Per contra, learned APP has vehemently argued that from the charge-sheet papers, prima facie case is made out against the present applicant and therefore, it is urged that discretion may not be exercised and ultimately, the learned APP has opposed the grant of bail looking to the nature and gravity of offence, involvement of the applicant - accused. The learned APP has further submitted that if the 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, even if there is a prima facie case, then also as such there is only one antecedent;

(b) the investigation is over and charge-sheet is filed;

(c) further as per the catena of decisions of Hon'ble Apex Court, there are mainly three 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) The matter is settled between the accused and complainant and affidavit to that effect is filed and the same is taken into consideration.

(e) that the learned advocate for the applicant has submitted that the applicant - accused is not likely to flee away;

(f) that the applicant - accused is in custody since **04.08.2020**;

(g) 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 and there should not be pre-trial punishment.

5.1 The affidavit filed by the original complainant, which reads as under:-

> "I Payalben D/o. Maganbhai Kalubhai Solanki, Age – 18 years, currently Res: Near Gayatri Mandir, Mahuva, Dist :- Bhavnagar, do hereby on solemn affirmation state as follows:-
>
> 1.xxx
>
> 2. That the FIR was filed by me in the heat of the

moment.

3. That I humbly request the Hon'ble Court to grant the petitioner bail as the matter is settled between the petitioner and me. I do not have any grievance against the petitioner.

4. xxxx

Date 10. Nov. 2020 "

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 - **VIJAYBHAI LALJIBHAI CHUDASAMA** is ordered to be released on regular bail in connection with above-referred FIR, on executing a personal bond of **Rs.20,000/- (Rupees Twenty thousand only)** with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that the applicant 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, before the trial Court within a week. If he does not possess passport, he shall file an affidavit to that effect;

(h) mark presence before the concerned police station on every 1st day of the English calender month between 11:00 a.m. and 2:00 p.m. for a period of one year or till the trial is over, whichever is earlier;

(i) 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.

6.1 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.

6.2 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 shall release the applicant forthwith only if the applicant is not required in connection with any other offence for the time

being.

7. Rule is made absolute accordingly.

7.1 The Registry shall communicate this order by fax / e-mail to the concerned Court / authority.

(DR. ASHOKKUMAR C. JOSHI,J)

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