IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION NO. 19064 of 2020

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BHARATBHAI GOBARBHAI MAKWANA
Versus
STATE OF GUJARAT

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Appearance:
MALAYKUMAR S PATEL(8901) for the Applicant(s) No. 1
MR HARDIK SONI, APP (2) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.G.URAIZEE**
Date : 16/12/2020
ORAL ORDER

1. RULE. Learned Additional Public Prosecutor waives service of notice of Rule on behalf of the respondent- State of Gujarat.

2. The present application is filed under Section 439 of the Code of Criminal Procedure by the applicant for regular bail in connection with an FIR being C.R.No.11193062200514 of 2020 registered with Dungar Police Station, District: Amreli for the offences under Sections 363, 366, 376 of the Indian Penal Code and Sections 4, 8, 17 and 18 of POCSO Act.

3. Heard Mr. Malaykumar S. Patel, learned advocate for the applicant and Mr. Hardik Soni, learned APP for the respondent No.1.

4. Mr. Patel, learned advocate for the applicant submits that the investigation is over and charge-sheet is filed. He submits that there was love affair between the applicant and the victim. He submits that the applicant has stated the history before the medical officer that there was a consensual physical relationship between her and the applicant. He, therefore, submits that looking to the nature of allegation and evidence, the applicant may be enlarged on bail.

5. Mr. Soni, learned APP for the respondent has opposed this application. He submits that the victim was aged around 15 years at the time of incident. He submits that the victim belongs to the same

village. Hence, if released, the applicant is likely to tamper with the prosecution evidence. He, therefore, submits that the applicant may not be released on bail. However, he submits that if the Court is inclined to release the applicant on bail, reasons may not be assigned on the merits of the case.

6. In the facts and circumstances of the case and considering the nature of allegations made against the applicant in the FIR, I am of the opinion that without expressing opinion on merits and arguments canvassed by the learned advocates on either side this is a fit case to exercise the discretion and enlarge the applicant on regular bail. Hence, the present application is allowed and the applicant **is** ordered to be released on **regular bail** in connection with an FIR being **C.R.No.11193062200514 of 2020** registered with Dungar **Police Station, District: Amreli** on executing a personal bond of **Rs.10,000/-** (Rupees Ten Thousand Only) with one surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that the applicant 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] not leave the State of Gujarat without prior permission of the Sessions Judge concerned;

[e] mark presence before the concerned Police Station on every Monday of each English calendar month for a period of **three** months and thereafter, alternate Monday for a period of **six** months, between 10:00 a.m. and 3:00 p.m.;

[f] not enter the village-Rajparda, District : Amreli till 31st of May 2021 except for attending the Court.

[g] furnish latest and permanent 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 this Court;

7. 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. 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 applicant on bail.

Rule is made absolute to the aforesaid extent. Registry is directed to send the copy of the order through email or Fax to the concerned trial Court.

(A.G.URAIZEE, J)

NAIR SMITA V./MANOJ