IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 19559 of 2020

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BHAGAABHAI VELABHAI WAJIR

Versus

STATE OF GUJARAT

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Appearance:
MR NIMESH M PATEL(6780) for the Applicant(s) No. 1
MR MANAN MEHTA, APP (2) for the Respondent(s) No. 1

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CORAM:**HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**

Date : 22/12/2020

ORAL ORDER

[1] Rule. Mr. Manan Mehta, learned Additional Public Prosecutor waives service of notice of rule for and on behalf of respondent-State.

[2] By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant – original accused has prayed to release him on anticipatory bail in case of his arrest in connection with C.R.No.I-11195001200534 registered with Agthala Police Station, Banaskantha for the offences punishable under Sections 313, 317, 202, 203, 114, 376(2)(j) of IPC and Sections 4 and 8 under Protection of Children Against Sexual Offences Act.

[3] Heard Mr. Nimesh Patel, learned counsel for the applicant and Mr. Manan Mehta, learned APP for the State by video conferencing.

[4] At the outset, it has been pointed out that three other co-accused have already been granted anticipatory bail by this Court vide orders which are annexed as Annexure-C to this application. Learned counsel for the applicant has prayed for parity being extended to the present applicant also as the role

assigned to all the accused is more or less the same. No distinction or difference could be pointed out by learned APP.

[5] He further submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. Besides, the applicant is available during the course of investigation and will not flee from justice. Learned advocate for the applicant on instructions states that the applicant is ready and willing to abide by all the conditions including imposition of conditions with regard to powers of Investigating Agency to file an application before the competent Court for his remand. He would further submit that upon filing of such application by the Investigating Agency, the right of applicant accused to oppose such application on merits may be kept open. In view of the above, the applicant may be granted anticipatory bail.

[6] Learned APP appearing on behalf of the respondent-State has opposed grant of anticipatory bail looking to the nature and gravity of the offence.

[7] I have considered the allegations leveled against the present applicant in the FIR and perused the papers of investigation. It appears that the entire case of the prosecution is based upon the documentary evidence alleged to have been collected during the course of investigation.

[8] Having heard the learned counsel for the parties by video conferencing and perusing the record of the case and taking into consideration the facts of the case, nature of allegations, role attributed to the accused and punishment prescribed for the alleged offences, without discussing the evidence in detail,

at this stage, this Court is inclined to grant anticipatory bail to the applicant. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors. Reported in (2011)1 SCC 694**, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitutional Bench in the case of **Shri Gurubaksh Singh Sibbia & Ors., reported in (1980)2 SCC 565**.

[9] In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to C.R.No.I-11195001200534 registered with Agthala Police Station, Banaskantha, the applicant shall be released on bail on furnishing a personal bond of Rs.15,000/- (Rupees Fifteen Thousands only) with one surety of like amount, on the following conditions that he:

[a] shall cooperate with the investigation and make himself available for interrogation whenever required;

[b] shall remain present at the concerned Police Station on 12.01.2021 between 11:00 a.m. and 2:00 p.m.;

[c] shall 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 to any police officer;

[d] shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the Police;

[e] shall at the time of execution of bond, furnish the address to the Investigating Officer and the Court concerned and shall not change his residence till the final disposal of the case or till further orders;

[f] shall not leave India without the permission of the Court and, if having passports shall surrender the same before the Trial Court within a week.

[10] Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicant to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. The applicant shall remain present before the learned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the learned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police remand. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if ultimately granted, and the power of the learned Magistrate to consider such a request in accordance with law. It is clarified that the applicant, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

[11] At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the applicant on bail. Rule is made absolute. The present application is disposed of accordingly. The Registry is directed to communicated this order to the concerned court by email.

(VIKRAM NATH, CJ)

A. B. VAGHELA/radhan