IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 23415 of 2019

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GAURAV NANDKISHOR TYAGI

Versus

STATE OF GUJARAT

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Appearance:
MR. KISHAN H DAIYA(6929) for the Applicant(s) No. 1
MR.KISHAN PRAJAPATI(7074) for the Applicant(s) No. 1
MR UTPAL M PANCHAL(1075) for the Respondent(s) No. 1
MR HK PATEL, ADDITIONAL PUBLIC PROSECUTOR(2) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI**

Date : 27/01/2020

ORAL ORDER

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being C.R. No.I-3 of 2019 registered with Cyber Crime Police Station, District Surat, for offence under Sections 406, 419, 420, 465, 467, 468, 471 and 120B of the Indian Penal Code and Sections 66(C) and 66(D) of the Information Technology Act.

2. Learned Advocate appearing on behalf of the applicant submits that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

3. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.

4. Learned advocate Mr.Uptal Panchal appearing for the original first informant has vehemently opposed this application and referred the

allegations made in the affidavit filed by the first informant and, thereafter, contended that the applicant has committed serious offence and, therefore, looking to the facts of the present case and looking to the allegations levelled against him, this Court may not exercise discretion in his favour. It is, therefore, urged that this application is dismissed.

5. It is also contended that the charge-sheet is farmed and plea of the applicant is recorded. He has also submitted that threats were given to the first informant and, therefore, the first informant has given a written complaint to the concerned authority and the Police Commissioner in October, 2019 and, therefore, this Court may not exercise discretion.

6. Learned Advocates appearing on behalf of the respective parties do not press for further reasoned order.

7. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

8. This Court has considered following aspects,

(a) the applicant is in Jail since 21.08.2019;

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

(c) case is triable by the Court of Magistrate;

(d) no antecedent is registered against the applicant;

(e) I have perused the allegations levelled against the applicant and role attributed to him in the incident in question;

(f) learned advocate for the applicant, under the instructions, submits that the applicant is ready and willing to deposit Rs.4 lakhs before the concerned trial Court within a period of four months from the date of his actual release, without prejudice to his rights and contentions;

(g) it is required to be noted that though the charge is framed, looking to the papers of the charge-sheet, it is revealed that the trial of the present case would not be over within reasonable time or in near future;

(h) learned advocate for the first informant has placed on record the written complaint given by him to the concerned Police authority. However, if the said written complaint is carefully examined, it is revealed that the said complaint is given against Jyoti Umedsing Bisht and Amarnath Sharma and not against the applicant, who is in Jail. Therefore, I am not impressed with such submission canvassed by the learned advocate for the first informant; and

(i) looking to the facts and circumstances of the present case, I am inclined to consider the case of the applicant.

9. This Court has also taken into consideration the

law laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra Vs. Central Bureau of Investigation**, reported in **[2012] 1 SCC 40.**

10. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being C.R. No.I-3 of 2019 registered with Cyber Crime Police Station, District Surat, 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 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;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave the India without prior permission of the concerned trial court;

[e] mark presence before the concerned Police Station between 1st to 10th day of every English calendar month for a period of six months between 11:00 a.m. and 2:00 p.m.;

[f] furnish the present 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 the concerned trial court;

[g] the applicant shall deposit an amount of Rs.4 lakhs before the concerned trial

Court within a period of four months from the date of his actual release without prejudice to his rights and contentions and shall also file an Undertaking to that effect before this Court within a period of one week from the date of his actual release;

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. 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.

12. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

13. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(VIPUL M. PANCHOLI, J)

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