

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER
CHARGESHEET) NO. [REDACTED] of 2024**

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[REDACTED]

Versus
STATE OF GUJARAT

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Appearance:

MR. SNEH R PUROHIT(16134) for the Applicant(s) No. 1
MR. VISHAL D. DAVDA(14293) for the Applicant(s) No. 1
MS ASMITA PATEL, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 03/10/2024
ORAL ORDER

1. **RULE.** Learned APP waives service of rule for the respondent-State.
2. The present application is filed under Section 483 of the Bharatiya Nyaya Suraksha Sanhita, 2023 (for short "BNSS") for regular bail in connection with FIR being **C.R. No.11203023240428 of 2024 registered with A Division Police Station, Junagadh for the offences punishable under Sections 377, 386 and 389 of the Indian Penal Code, 1860 (for short "IPC") / The Bharatiya Nyaya Sanhita, 2023 (for short "BNS").**
3. Learned Advocate appearing on behalf of the applicant submits that the applicant has nothing to do with the offence and he is falsely implicated in the offence. It is further submitted that, considering the nature of the offence, the applicant may be granted regular bail with the imposition of suitable conditions.

4. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. It is submitted that the present applicant is directly involved in the offence, and there is substantial evidence linking him to the crime. Therefore, the present application may be dismissed.

5. While granting bail, the Court has to consider the involvement of the accused in the alleged offence, the jurisdiction to grant bail has to be exercised on the basis of the well settled principles having regard to the facts and circumstances of each case and the following factors are to be taken into consideration while considering an application for bail: (i) the nature of accusation and the severity of the punishment and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses and threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations are required to be considered.

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

- (1) Investigation is over and charge-sheet is filed;
- (2) No chance of flight risk.
- (3) No possibility of tampering the evidence.
- (4) Prima facie, it appears that a consensual relationship was going on between the applicant and the complainant. The present applicant is only 22 years old and has no past antecedents.
- (5) So far as Section 377 of the IPC is concerned, it was decriminalized by the Hon'ble Apex Court in the case of **Navtej Singh Johar vs. Union of India**, reported in **2018 (10) SCC 1**.
- (6) So far as Section 386 is concerned, there is no evidence or material to suggest that the present applicant caused any grievous injury, put the complainant in fear of death, or extorted money.
- (7) So far as Section 389 is concerned, the accusation of the offence under Section 387 is not established, as there is no evidence of monetary transactions or threats made by the applicant with the intent to extort money.
- (8) Now, nothing required to discover or recover from the accused, and there is no possibility of proceeding with the trial in the near future.

7. 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 as well as in the case of **Gudikanti Narasimhulu And Ors vs. Public Prosecutor, High Court of Andhra Pradesh** reported in (1978)1 SCC 240. Obviously, the conclusion of trial will take

time and keeping the accused behind the bars is nothing but amounts to pre-trial conviction and therefore, considering the celebrated principle of bail jurisprudence is that “*bail is a rule and jail is exception*” as well as the concept of personal liberty guaranteed under Article 21 of the Constitution of India, present application deserves consideration.

8. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the FIR, without discussing the evidence in detail, *prima facie*, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being **C.R. No.11203023240428 of 2024 registered with A Division Police Station, Junagadh on executing a personal bond of Rs.25,000/- (Rupees Twenty-five 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 & 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, 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;

9. 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.

10. 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.

11. 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.

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

(HASMUKH D. SUTHAR,J)

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