

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 22951 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SAMIR J. DAVE

Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO
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FAKIRMAMAD HUSHENBHAI SUMBHANIYA

Versus

STATE OF GUJARAT

Appearance:

PARTH J ADHYARU(9359) for the Applicant(s) No. 1
MS MONALI BHATT, APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 16/12/2022
ORAL JUDGMENT

1. Rule. Learned App waives service of notice of Rule for and on behalf of Respondent-State.
2. This application is filed under Section 439 of the Code of Criminal Procedure for regular bail

in connection with F.I.R. registered as C.R. No.11185008220005 of 2022 with Vadinar marine Police Station, District Devbhumi Dwarka for the offences punishable under Sections 354(A) 1, 354(B) and 506(2) of the Indian Penal Code read with sections 8, 12, 18 of the Protection of Children from Sexual Offences Act, 2012.

3. The brief facts of the present case are as under:

3.1 That on 20.01.2022, at about 11:00 am in the morning when the complainant alongwith her family returned to their home from village Sikka, she found that her husband – accused is present in the house. Thereafter, the complainant went to the adjacent house of her sister-in-law Fatma and her children were playing in the market and at that time, she heard the voice of the victim who is aged 12 years and 7 months only was shouting and coming out from the house and upon asking the victim

that why she was shouting, the victim informed the complainant in presence of other people that when she was alone in the house, her father accused caught hold the hand of the victim and drove her in to the house and moving his hand inappropriately on the chest part of the minor victim girl and also physically molested her. However, the victim was successful in break forth the clutch of her father and she ran away from the house and started shouting. Therefore, the complainant quarreled with the accused and the accused in presence of other people has declared that he wanted to marry her minor daughter i.e. victim. The complainant has also stated that earlier also before about 25 days, the same incident had taken place with the victim when she was sleeping in the house and the complainant was afraid of her husband as he has threatened the complainant that if she will inform anything about this incident to anyone, he will kill all

the family members. Therefore, the FIR came to be lodged with Vadinar Marine Police Station for the commission of aforesaid offences.

4. Heard learned advocates for the respective parties.
5. Learned Advocate Mr. Parth Adhyaru appearing for the applicant submits that the complainant in the present FIR is the wife of the applicant and both the husband and wife i.e. applicant herein and the complainant are not having good marital relations since long and the disputes are going on between them since long. As the disputes are going on between both the spouse, the complainant has used the prosecutrix for making such vague allegations and by which to twist arms of the present applicant. He submits that as per the case of the prosecution, the offence is alleged to have occurred before 25 days, whereas the FIR is registered only on 21.01.2022. Thus, the delay on the part of the

complainant suggests that the same has been filed after great deliberations, concoctions and fabrications with a view to falsely involve the applicant in the crime in question. The applicant is father of the prosecutrix and therefore, it cannot be believed that such act can be done by him. It is further submitted that as per marital relations of the complainant and applicant are not good and therefore, the complainant wants to stay away from the applicant and therefore, she has forced the prosecutrix to register this false FIR against the present applicant. He submits that investigation is over and charge-sheet is filed before the concerned court. Therefore, there is no question of tampering with the evidence or hampering the investigation. He therefore submits that considering the present application, the applicant may be enlarged on regular bail by imposing stringent conditions.

6. Learned APP Ms. Monali Bhatt appearing for

Respondent-State submits that the applicant accused is involved in very serious crime wherein the age of the victim is 12 years and 7 months only and he does not deserve the bail that there is all likelihood that the presence of accused may not be secured and the applicant-accused shall continue such activity and likely to tamper with the evidence. He therefore prayed that looking to the gravity of the offence present applicant may not be enlarged on bail.

7. From police report, it appears that in her statement before the police the victim informed the police that before about 25 days from the said incident, the applicant-accused has tied the hands of the victim with the rope and blocked her mouth with the cloth and also took out the frock worn by the victim and moved his hand inappropriately to the chest of the victim. Thereafter also, as per the FIR, when the complainant went to see her sister-in-law

Fatma residing in her neighbor and her children were playing in the market and at that time, she heard the voice of the victim, who was shouting and coming out from the house and upon asking the victim that why she was shouting, the victim informed the complainant in presence of other people that when she was alone in the house, her father accused caught hold the hand of the victim and drove her in to the house and moving his hand inappropriately on the chest part of the minor victim girl and also physically molested her.

8. In the case of **Wahid Khan v. State of Madhya Pradesh**, reported in (2010) 2 SCC 9, it has been observed by the Hon'ble Supreme Court as under:

"It is also a matter of common law that in Indian society any girl or woman would not make such allegations against a person as she is fully aware of the repercussions flowing therefrom. If she is found to be false, she would be looked at by the society with contempt throughout her life. For an unmarried girl, it will be difficult to find a suitable

groom. Therefore, unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracised by the society. It would indeed be difficult for her to survive in Indian society which is, of course, not as forward-looking as the western countries are."

9. In the case of **Sevaka Perumal v. State of T.N.**, reported in (1991) 3 SC 471, the Hon'ble Supreme Court has cautioned :-

"Undue sympathy to impose inadequate sentence would do more harm to the justice (delivery) system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats. If the Courts did not protect the injured, the injured would then resort to private vengeance. It is, therefore, the duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc."

10. A "sire", is duty bound to discharge his fatherly obligations towards "siblings" in a solemn way, but in total transgression of established norms and cherished legacy and also

acting against law, appellant-accused ravaged the chastity of his own daughter (including step daughter also) not only singly but at multiple frequency.

11. The purity that a father-daughter relation carries, when shattered in such a manner, obliterates the sanctity and belief in any existing relation. A daughter looks to her father to protect her from outside evils and when the very same protector rips her apart, the trauma one suffers as a consequence of such an act cannot even be described in simple terms. What a plight of a child who does not even know the seriousness of the offence committed upon her. The trauma attached to it destroys and shatters not only the normal growth of a child but her whole existence comes tumbling down. The beastly act of ravishing a child for exerting his position of a male dominance and violating her physical and mental well-being, is attitude of a savage tribe and

not of a civilized society. To fathom the aftermath of the sentience of the happening of such tormenting act on the person is to add yet another monumental blow to her dignity.

12. It is appalling to see that rape/ molestation rears its ugly facade almost every day. 'Rape' / 'molestation' is one such dark reality in the Indian Society that devastates a women's soul, shatters her self-respect and for a few, purges their hope to live. It shakes the insight of a woman/ girl who once was a 'happy person', and had no clue of being a victim of the said horrifying and nightmarish encounters where the daughter had been raped/ molested by none else but her own progenitor. A daughter always looks up to her father as a shield of her dignity and honour which is an intrinsic facet of a family especially of father-daughter relationship. It shocks human conscience when the sanctity of father and daughter relationship is ravaged in such a sordid manner and the protector becomes

the violator. In such a case the offence assumes a greater degree of vulnerability which shall not go unpunished. There can never be a graver heinous crime than the father being charged of raping/ molesting his daughter. It is the gravest sin, where the most platonic relationship is shattered by an extreme pervert and shameful act of nonetheless but one's own father. The moral values of individuals of the society have gone down to such a level that every day we hear similar news which shudders our mind and soul. We have become accustomed to saying that females are not safe outside the house but in few cases, it is seen that they are not even safe inside their homes, where the epitome of God's beautiful creation, a child is ravished by her own father for his momentary sexual needs and pleasure which is heart-rending and odious.

13. One of the contentions of the learned advocate for the applicant is that F.I.R. was lodged

with inordinate delay thus no reliance can be placed and delay in lodging the F.I.R. itself belies the whole prosecution story. The Hon'ble Supreme Court in a catena of judgment has held that mere delay in lodging the FIR is no ground to doubt the prosecution case when it is properly explained. In case of **Tara Singh v. State of Punjab**, 1991 Supp (1) SCC 536, reported in **AIR 1991 SC 63**, the Hon'ble Supreme Court held that mere delay in lodging the FIR by itself cannot give scope for an adverse inference leading to rejection of the prosecution case outright.

14. It is also beneficial to refer to judgment of the Hon'ble Supreme Court in case of **The State of Kerala vs. Mahesh**, wherein the Hon'ble Supreme Court in para No.17 has observed as under:

17. In **Prasanta Kumar Sarkar v. Ashis Chatterjee**, (2010) 14 SCC 496, the Supreme Court laid down the parameters for granting or refusing the grant of bail which are as under:

- i. whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence;
- ii. nature and gravity of the accusation;
- iii. severity of the punishment in the event of conviction;
- iv. Danger of the accused absconding or fleeing, if released on bail; v. character, behavior, means, position and standing of the accused;
- vi. Likelihood of the offence being repeated;
- vii. Reasonable apprehension of the witnesses being influenced; and
- viii. Danger, of course, of justice being thwarted by grant of bail."

15. Considering the submissions made by learned advocate Mr. Parth Adyaru for the applicant, learned APP Ms. Monali Bhatt for the Respondent-State as well as the police papers, it appears that *prima facie* prosecution has established the case against the present applicant. It appears that there are no reasonable grounds for believing that the present applicant is not guilty of the alleged offence and that he is not likely to commit any offence while on bail.

16. Before parting, it is important to note here some famous shlokas from ManuSmruti and Padma Pauran about 'Father' and 'Mother' as under:

(1)	
उपाध्यायान्दशाचार्य आचार्याणां शतं पिता । सहस्रं तु पितृन् माता गौरवेणातिरिच्यते ॥	
Meaning in Hindi	दस उपाध्यायों से बढ़कर आचार्य, सौ आचार्यों से बढ़कर पिता और एक हजार पिताओं से बढ़कर माता गौरव में अधिक है, अर्थात् बड़ी है। मनुस्मृति
Meaning in English	An Acharya is greater than ten Upadhyayas, a father is greater than a hundred Acharyas and a mother is greater in glory than a thousand fathers.
(2)	
जनकश्वोपनेता च यक्ष विद्यां प्रयच्छति । अन्नदाता भयत्राता पश्चैते पितरः स्मृताः ॥	
Meaning in Hindi	जन्मदाता, उपनयन संस्कारकर्ता, विद्या प्रदान करने वाला, अन्नदाता और भय से रक्षा करने वाला ये पांच व्यक्ति को पिता कहा गया है।
Meaning in English	One who gives birth, one who initiates, one who imparts knowledge, one who provides food and protects from fear, these five are considered as fathers.
(3)	

पिता धर्मः पिता स्वर्गः पिता हि परमम् तपः।	
Meaning In Hindi	मेरे पिता मेरे धर्म हैं, मेरे पिता मेरे स्वर्ग हैं, वे मेरे जीवन की परम तपस्या हैं। पद्मपुराण
Meaning in English	My Father is my dharma, my father is my heaven, he is the ultimate penance of my life.

17. For the foregoing reasons and from the facts and circumstances of the case, it appears that the prosecution has clearly established the *prima facie* case against the present applicant and thus, this Court is not inclined to exercise the powers vested under section 439 of Code of Criminal Procedure Code for releasing the present applicant on bail.

18. Accordingly, present application stands rejected. Rule is discharged.

Sd/-
(SAMIR J. DAVE, J)

MEHUL B. TUVAR