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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 11225 of 2021

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BIPINBHAI SHANABHAI PARMAR (UPADHYAY)
Versus
STATE OF GUJARAT

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Appearance:

RAFIK LOKHANDWALA(5590) for the Applicant(s) No. 1
MS MONALI BHATT, ADDL. PUBLIC PROSECUTOR(2) for the
Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 09/07/2021

ORAL ORDER

1. RULE. Ms. Monali Bhatt, learned APP waives service of rule on behalf of respondent-State.

2. Heard Mr. Rafik Lokhandwala, learned advocate for the applicant and Ms. Monali Bhatt, learned APP for the respondent-State.

3. Mr. Rafik Lokhandwala, learned advocate for the applicant submitted that Criminal Misc. Application No. 7448 of 2021 was filed by the present applicant who is an advocate by profession and since chargesheet came to be filed during the pendency of the application, he proposed to withdraw the same and the said application came to be disposed of with a liberty to file appropriate bail application before the appropriate authority. Mr. Lokhandwala, learned advocate submitted that after filing of the chargesheet, the bail application was moved before the Sessions Court, and as per

the statutory right, the present application is filed after the chargesheet.

3.1 Learned advocate for the applicant submitted that, as per the allegations in the chargesheet, the role attributed to the applicant is that the applicant had only drafted the complaint, which, according to learned advocate Mr. Lokhandwakla, the applicant has only performed his professional duty as a lawyer. Learned advocate for the applicant submitted that the present applicant's action gets protected in view of provisions of Sections 126 and 129 of the Indian Evidence Act and in no way he can be considered as conspirator to any of the act of the co-accused.

3.2 Learned advocate for the applicant submitted that as per prosecution one of the co-accused was made a bait to entrap the witnesses and threat was given to file false complaint of rape and thereafter co-accused sought for compromise with the witnesses and demanded the money. Learned advocate for the applicant submitted that, as per the record, no such allegation is against the present applicant no such money has been deposited in his account. He, therefore, submitted that the chargesheet has been filed and now nothing further is required to be investigated, and therefore, considering the nature of offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

4. Ms. Monali Bhatt, learned Additional Public Prosecutor appearing on behalf of the respondent-State referring to the chargesheet submitted that the present applicant is a co-conspirator; the allegation is that since August/September

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2020 till filing of the complaint, a friend request was sent through face book medium and people were made victims by giving threat of filing false application under rape and POCSO and would extort money by way of compromise. Learned APP further submitted that in the said fashion all the co-accused have extorted Rs.5.00 lakhs from the complainant. Learned APP submitted that a very serious offence has been committed by the applicant who being an advocate, rather should have given a complaint for such illegal activities of the co-accused than to have supported illegal cause to make his non-involvement explicit in the matter.

5. It is required to be noted that the chargesheet has been filed; the allegation if read in totality, the act which is attributed to the present applicant is of writing a complaint. Proviso to Section 126 of the Indian Evidence Act makes it clear that the professional communications of the advocates are protected from disclosure only to the extent of his advice to his client in the course of his professional employment and for the purpose of such employment but no such protection is given to any communication made in furtherance of illegal purpose. The allegation made in the complaint is totally an illegal activity and the present applicant being a lawyer ought to have offered himself as a witness to the police, still, however, what kind of professional advice was provided by him and whether his case would fall within the purview of professional ethics would be the matter which would be decided during the trial. Thus, considering the nature of allegations levelled against the applicant and the punishment prescribed to the sections invoked in the case and when the trial will take its own time to conclude; this Court is of the view that the

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discretion is required to be exercised to enlarge the applicant on bail.

6. For the foregoing reasons, the application is allowed and the applicant is ordered to be released on bail in connection with F.I.R. registered at C.R. No. 11191030210016 of 2021 with West Mahila Police Station, Ahmedabad, on executing a 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 the 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] furnish the present address of residence to the I.O. 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 shall adhere to its own Circular relating to COVID-19 and, thereafter, 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,

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modify and/or relax any of the above conditions in accordance with law. 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.

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

A.M.A. SAIYED

(GITA GOPI,J)

