

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION NO. 12768 of 2022

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SUSHANT SIDDHNATH YASU

Versus
STATE OF GUJARAT

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Appearance:

MR N.D. NANAVATY, LD. SR. COUNSEL ASSISTED BY MR MB RANA(2760) for the Applicant(s) No. 1
MR MANAN MAHETA, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 15/07/2022

ORAL ORDER

1. Rule. Learned APP waives service of notice of Rule on behalf of respondent State. By consent, Rule is fixed forthwith.
2. This application under Section 439 of Cr.P.C. is for grant of bail to the applicant in connection with FIR being **C.R. No.11195006220018 of 2022, registered with Mahila Police Station, District: Banaskantha** for the offences punishable under Sections 376, 323, 294(b) and 506(2) of the IPC. The applicant apprehended on 09.06.2022. The application is filed before charge-sheet. The application for his regular bail was rejected by the Sessions Court concerned vide its order dated 28.06.2022.
3. Heard Mr. N.D. Nanavaty, learned Senior Counsel assisted by Mr. M.B. Rana, learned counsel for and on behalf of

the applicant, Mr. Ankit Bachani, learned counsel for the informant-victim and Mr. Manan Maheta, learned APP for the respondent-State.

4. Mr. N.D. Nanavaty, learned Senior Counsel urged the following contentions:

(i) It was submitted that, as per the prosecution case, the applicant herein called the victim at the Adalaj Trimandir Temple at Ahmedabad, in the month of January-2019, under the pretext of the supervise the construction site and during the lunch hours in the room, she was raped by the applicant under the influence of intoxicated substance and allegedly, took objectionable photographs and videography and thereafter, he pressurized the victim to maintain relationship and threatened her that he will viral the objectionable photos and videos in social media and after the settlement on the issue, the applicant still continued to threaten her to viral her videos etc. It is in this context, learned Senior Counsel submitted that, no offence under Section 375 of the IPC is made out in the present case and the FIR lodged with malafide intention and same is clear example sheer misuse and abuse of process of law. The alleged incident, took committed on 12/13.01.2019 at Ahmedabad, and FIR came to be registered on 08.06.2022 for which no any satisfactory grounds disclosed by the victim.

(ii) It was further submitted that, prior to the lodgement of FIR, the victim and applicant were came

into contact in the year 2018-19 and the victim by profession being a Architect, she had rendered her services to design farm house allegedly purchased from the father of the victim and in that process, they came closer. The victim is aged about 32 years old. The applicant got divorced on 08.07.2019. In such circumstances, no case is made out for alleged commission of rape under Section 375 of the IPC.

(iii) It was urged that, prior to the FIR, the victim, on 22.06.2019, submitted her complaint before Cyber Crime Police Station, Ahmedabad, wherein, she did not disclose the alleged incident of rape alleged to have been committed on 12.01.2019. Pursuant to the complaint, her statement was recorded by the Authority wherein also, she did not utter a word about alleged commission of rape. In such circumstances, he submitted that, the allegations leveled in the FIR are false, concocted and having been alleged with oblique motive and for extraneous consideration.

(iv) Referring to the documentary evidence, learned Senior Counsel submitted that, due to relationship with the victim, the applicant herein paid Rs.16,89,295/- by way of cheque, during the period from 22.10.2018 to 13.10.2019, for which, the mother of the victim issued a cheque dated 07.04.2022 and the same was dishonoured and after serving the statutory notice, the applicant herein lodged a private complaint for dishonor of cheque under the provisions of N.I. Act and the same is pending before the Judicial Magistrate, Palanpur. It is in this

context, it was submitted that, in order to avoid financial liability and to pressurize the applicant herein to withdraw the case proceedings, the FIR in question is being lodged.

(v) Lastly, it was submitted that, pursuant to the complaint filed before Cyber Crime Police Station, Ahmedabad, the parties have settled their disputes amicably and in writing it was recorded that, the applicant will not either message the victim or contact her on cellphone and also agreed to delete all the personal photographs and other things and accordingly, from the date of understanding i.e. 24.06.2019, nothing objectionable remains with the applicant as he has deleted all the contents from his mobile phone and during the course of investigation in the present FIR, nothing is found to indicate that, the applicant having in his mobile phone the objectionable photographs of the victim and had never sent messages as alleged in the FIR.

5. In view of the aforesaid contentions raised by learned Senior Counsel, it was submitted that, the applicant is working as an Inspector with Income Tax Department and now he is under suspension and having a good reputation in the society and having a responsibility to feed a minor child, who is residing with the applicant after he got divorce from his wife and therefore, when the investigation is virtually over and applicant will be easily available at the time of trial and he having no any past criminal record, learned Senior Counsel prays that discretion may kindly be exercised by enlarging the

applicant on bail by imposing suitable conditions.

6. Opposing the bail application, Mr. Ankit Bachani, learned counsel for the victim and Mr. Manan Maheta, learned APP for the respondent-State, reiterating the facts of affidavit, contended that, there is *prima-facie* evidence to believe that the applicant has committed the grave offence of rape and therefore, considering the nature and gravity of accusation, severity of punishment in the event of conviction and his conduct, he is dis-entitled for bail as prayed for. It was submitted that, after the alleged offence of rape, the applicant blackmailed the victim to keep relationship and threatened that if she will not maintain the relationship, then, he would viral the photos and videos on social media. Even after the settlement, the applicant did not delete the objectionable contents and he continuously sent messages to defame her. It is in this context, it was submitted that, investigation is at crucial stage and still laptop and electric devices of the applicant yet to be recovered and so far data of cellphone is concerned, the report of F.S.L. is awaited. It was further submitted that, if bail is granted then, considering the position of the applicant, there is reasonable apprehension of witnesses being influenced.

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7. In view of the aforesaid contentions raised by learned counsel Mr. Bachani and Mr. Maheta, learned APP they prayed that, no case is made out for exercising discretion in favour of the applicant and application deserves to be dismissed.

8. In order to appreciate rival submissions, following facts of the case are required to be recorded.

The victim aged about 32 years, is by profession an Architect and she belongs to City: Palanpur where she is rendering her services at different projects. She came into contact with wife of the applicant herein, who was serving in Bank of Baroda and due to acquaintance with her, she came into contact with the applicant herein and since 2018-19, they were in contact. The applicant herein bought one farm house from the father of the victim for which victim has rendered her services for development of the farm. The victim was also commute between Palanpur and Ahmedabad as she having some projects in Ahmedabad. It is alleged that, on 12/13.01.2019, the applicant was in Ahmedabad and had rang up the victim and called her at Trimandir, Adalaj Temple under the pretext to see construction site. It is further alleged that, on that day, during lunch hours, the applicant committed rape under the influence of some intoxicated substance and in the night hours also, she was raped and during the day, he recorded video and took some objectionable photographs. It is further alleged that, the applicant pressurized the victim to get marry with him and threatened her to maintain relationship, otherwise, he will viral the objectionable contents on social media. It is alleged that, she had filed complaint before Cyber Crime Police Station, where amicable settlement was arrived at and thereafter also, he had threatened the victim by sending messages that if she will not marry him, then he will viral the contents on social media. In this background facts, it is alleged by the victim that she has no alternate but to lodge an FIR and accordingly, FIR came to be lodged for the offences as referred above.

9. Having considered the facts and circumstances of the present case and contentions raised herein above, this is a case where the applicant needs to be enlarged on bail for the following reasons:

- (i) for the offence alleged to have been taken place in the month of January-2019, the FIR came to be lodged on 08.06.2022;
- (ii) prior to the lodgement of FIR, the victim had submitted one complaint dated 22.06.2019, addressed to Cyber Crime Authority, Ahmedabad wherein the incident of rape was not disclosed and pursuant to the complaint, the statement recorded by the authority, wherein also nothing has been disclosed about the incident.
- (iii) it has been vehemently submitted that by the State as well as Mr. Bachani, learned counsel for the victim that, after the compromise dated 24.06.2019, the applicant did not stop to harass the victim. However, fact remains that, nothing is on record to suggest that after the compromise, the objectionable contents are still with the applicant.
- (iv) prior to the FIR, due to money transaction alleged to have been entered into between the parties, the proceedings filed under the provisions of N.I. Act is pending before the Court concerned.
- (v) in view of the aforesaid circumstances (i to iv), this Court is of *prima-facie* considered view that, the alleged

act was consensual in nature. The record indicates that, more particularly, the photographs of the parties, it is evident that, for a considerable time, parties were in good terms and the applicant was keenly interested to tie the knot with the victim, however, it could not happen.

10. For the foregoing reasons, this Court is of considered view that, the investigation is virtually over, applicant is in custody since 09.06.2022 and he having a responsibility to feed his minor son. When the prosecution failed to point out that further custody of the applicant is necessary, this Court is of view that, considering the apprehension expressed by the victim about tempering with the evidence, imposing stringent conditions, I am inclined to release the applicant on bail with a condition that the applicant shall not enter into District: Banaskantha and City: Ahmedabad till recording deposition of the victim.

11. Hence, present application is allowed and the applicant is ordered to be released on regular bail in connection with the **FIR being C.R. No.11195006220018 of 2022, registered with Mahila Police Station, District: Banaskantha**, on executing a personal bond of Rs.10,000/- (Rupees Ten thousands only), with one surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that he shall;

| No. | Conditions |
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| (a) | not take undue advantage of liberty or misuse liberty; |

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| (b) | not act in a manner injuries to the interest of the prosecution; |
| (c) | surrender passport, if any, to the lower court within a week; |
| (d) | not leave India without prior permission of the Sessions Judge concerned; |
| (e) | furnish latest 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 trial Court; |
| (f) | not enter into District: Banaskantha and City: Ahmedabad till deposition of the victim before the concerned Court; |

12. 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 learned 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. At the trial, learned 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. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(ILESH J. VORA,J)

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