

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 11992 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

PRAGNESH HARSHADBHAI PATEL @ P.G. @ PRAGNESH GOTA
Versus
STATE OF GUJARAT

Appearance:

MR IH SAIYED, SENIOR COUNSEL WITH MS ZEAL H SHAH(9811) for the Applicant(s) No. 1

MR RJ GOSWAMI(1102) for the Respondent(s) No. 1

MR JK SHAH, ADDL PUBLIC PROSECUTOR for the Respondent(s) No. 1

PUNITA H JOSHI(8419) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN

Date : 17/08/2022

CAV JUDGMENT

1. Heard learned Senior Advocate Mr. I. H. Saiyed with learned Advocate Ms. Zeal H. Shah for the applicant, learned APP Mr. J. K. Shah for the respondent-State and learned Advocate Mr. R. J. Goswami with learned Advocate Ms. Punita H. Joshi for the first informant.

2. This successive application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 for being released on regular bail in connection with F.I.R. being C.R. Part-A No.11191030200061 of 2020 registered with Mahila Police Station (West), Ahmedabad City, on 03.11.2020, for the offences punishable under Sections 376(D), 120(B), 406, 294(B), 506(2), 328, 362 and 114 of the Indian Penal Code and Section 17 of the Indian Passports Act.

3. At the outset, it is required to be noted that the applicant had originally preferred an application being Criminal Misc. Application No. 18132 of 2021 for being released on regular bail and vide order dated 04.02.2022, this Court had permitted the applicant to withdraw the said application with liberty to approach this Court as and when new cause of action arises or the evidence of the prosecutrix is recorded in the trial, whichever is earlier.

4. Learned Advocate Mr. R.J. Goswami for the first informant had raised the preliminary objection as regards the aspect that as per the order dated 04.02.2022, the evidence of the prosecutrix is yet not recorded and only cause which is arising with the applicant is that the co – accused of the applicant has been released on bail vide order dated 24.06.2022 in Criminal Misc. Application No.2043 of 2022. He

has submitted that only on the ground of parity this application is filed, which cannot be entertained. He has also raised another preliminary objection that applicant has not approached the Sessions Court for regular bail before filing present application and therefore, present application is not maintainable.

5. Having regard to both the preliminary objections by learned advocate Mr. Goswami, in the opinion of this Court, co – accused of this offence has been granted bail by the Co – Ordinate Bench of this Court on. I do agree that law of parity cannot be applied without examining role of each of the accused. As such in the present case, all the accused have alleged to be committed an offence under Section 376(D), 120(B), 406, 294(B), 506(2), 328, 362 and 114 of the Indian Penal Code of the Indian Penal Code, so there is no question of bifurcation of role of each accused and on that count this Court can examine the bail application in the light of the fact that co – accused has been granted bail by the Co – Ordinate Bench. As regards other contention raised by learned advocate Mr. Goswami, charge sheet is already filed way back. The last application after the filing of the charge sheet before the Sessions court which was rejected. After that applicant has approached this Court and subsequently the application was withdrawn with a liberty reserved in favour of the applicant to

approach this Court in case new cause of action arise. Under that circumstances, if without approaching the trial Court if the applicant has filed an application which cannot be said to be illegal. Therefore, both the contentions raised by learned advocate Mr. Goswami cannot sustained.

6. It is to be noted that this Court passed an order that as and when new cause of action arises or the evidence of prosecutrix is recorded, whichever is earlier, applicant is at liberty to file fresh application.

7. Learned advocate Mr. Goswami has also raised contention that the order of the Co – Ordinate bench on 24.06.2022 has been challenged by the first informant before the Apex Court and it is pending to be heard. As such the hearing of the present application may be deferred.

8. Against which, learned senior advocate Mr. Saiyed has submitted that order of rejection of interim bail, matter went upto Apex Court vide IA No.99673 of 2022 and as per the order dated 29.07.2022, present bail application was requested to be taken up by this Court on date of hearing i.e. 05.08.2022. With these observations, such application was dismissed.

9. Learned Senior Advocate Mr. Saiyed would submit the trial has not been proceeded substantially and further even the victim not remaining present on certain dates and the present applicant being in custody in connection with the present offences since 10.11.2020, therefore it is requested that this Court may exercise discretion in favour of the present applicant.

9.1 Learned Senior Advocate Mr. Sayed would also take this Court by way of the averments in the petition and also by chronological events taken place through the allegations levelled in the FIR and would submit that while the FIR alleges commission of offences punishable under Section 376(D) etc. of the Indian Penal Code, but according to the learned Senior Advocate, looking to the narration in the FIR, the allegations appear to be improbable. It is submitted that even after alleging rape, the prosecutrix travels along with the accused for a considerable long distance, the first informant going on a vacation immediately, the first informant returning back from the vacation and accepting the hospitality of the accused including the present applicant would prima faice go to show that the allegations of commission of the heinous offence are not believable.

9.2 It is further submitted that for the period between 20.08.2020 to 03.11.2020, i.e. the period from which the first

informant came in contact with the applicant and other accused till the date of filing of the FIR, except for a brief period during which the first informant had gone on vacation to Goa, the entire time the first informant had enjoyed the hospitality of the applicant and other accused. It is submitted that as against the same, the first informant, intermittently alleges being raped on different dates but at the same time, she kept on accepting the hospitality of the accused would reflect the frivolous nature of the allegations. It is further submitted that while allegation of having recorded the first rape, the first informant was being blackmailed also does not appear to be correct, since no such video has been recovered. It is further submitted that the proximate cause of the FIR as could be made out from the FIR is the fact of the accused No.1 having a quarrel with his wife - accused No.5, since the wife apparently did not approve of the first informant staying in a residential accommodation provided by her husband i.e. accused No.1 and others. It is therefore requested to release the applicant on regular bail.

10. This application has been vehemently opposed by learned Advocate Mr. R.J. Goswami with learned Advocate Ms. Punita H. Joshi appearing for the first informant. Learned Advocate Mr. Goswami would submit that apart from the serious allegations levelled against the applicant and other coaccused

in the FIR, the facts would reveal that the first informant was threatened and intimidated to settle the matter with the accused and therefore releasing the applicant on regular bail at this stage, would derail the trial since the applicant would attempt to tamper with the witnesses or try to influence the first informant. Learned Advocate Mr. Goswami would further submit that the first informant had filed an FIR against accused No.1, the present applicant and unknown persons being FIR No. 11216011220128 of 2022 with the Infocity Police Station, Gandhinagar, for offences punishable under Sections 507, 504 and 114 of the Indian Penal Code and Section 135 of the Gujarat Police Act, inter alia alleging that the first informant while she had gone to have dinner with her friend, she had threatened by two unknown persons on a motorbike with a knife and whereas on the same night at around 11:00 p.m. the first informant is stated to have received threatening phone calls abusing the first informant and asking her to settle the matter with the accused No.1 and the present applicant.

10.1 Learned Advocate Mr. Goswami would submit that as such, the first informant had filed an FIR on 17.06.2022 with the Vastrapur Police Station, Ahmedabad City, with regard to threatening calls asking her to settle the matter with the applicant. Learned Advocate would submit that looking to the

conduct of the present applicant and further considering the fact that the trial has not proceeded substantially, this Court may not release the present applicant on regular bail, at this stage.

11. Learned Additional Public Prosecutor Mr. J. K. Shah appearing for the respondent – State would submit that very serious allegations have been levelled against the applicant herein, more particularly of having raped the first informant. It is also submitted that no discretion can be used in favour of the present applicant and has prayed to reject the application.

12. In rejoinder, learned Senior Advocate Mr. Syed would submit that nothing has been brought on record by the prosecution regarding genuineness of the allegations of threatening and criminal intimidation nor any material has been placed on record by the prosecution regarding phone calls made by the present applicant. Till today the investigating agency is not able to file charge sheet against present applicant and the allegations of threatening are blow of arrow in thin air, just to ensure that applicant is not released on regular bail. Moreover, as per the submissions of learned APP regarding criminal antecedents are concerned, in all the cases, allegations are of cheating and no serious allegations are there and the applicant is protected and has been released on bail in all the

cases. It is also submitted that antecedents cannot be the only ground of rejection of bail.

13. Having heard the learned Advocates for the parties and having perused the investigation papers and the documents on record, the following aspects are taken into consideration by this Court :

(1) That this Court had permitted the present applicant to withdraw the earlier application vide order dated 04.02.2022 with liberty to approach this Court as and when new cause of action arises or the evidence of prosecutrix is recorded, whichever is earlier.

(2) As far as the merits is concerned, it appears that while the first incident of rape is alleged to have occurred on 11.09.2020, the first informant had neither complained at that time nor had she even raised any alarm, rather it appears that while the alleged incident had taken place in Udaipur, the first informant had thereafter accompanied the present applicant and the accused No.1 from Udaipur to Ahmedabad. It further appears that the first informant was dropped at Ahmedabad Airport, from where she had gone to Goa on vacation. These facts prima facie reveal that probably no such incident had taken place on

11.09.2020, and therefore the first informant had behaved absolutely normally.

(3) It also appears that after returning from Goa, the first informant had accepted the hospitality of the present applicant, more particularly while the present applicant and other were to provide residential accommodation to the first informant and since there was some issue with regard to such accommodation, at the instance of the present applicant, the first informant had put up in a hotel booked by the first informant. It appears that thereafter the first informant had stayed in the residential accommodation provided by the accused No.1 and the present applicant for at least couple of weeks. It also appears that thereafter the first informant had travelled along with accused including the present applicant to Gandhidham and whereas allegations of rape etc. have been levelled, which according to the first informant, happened during the journey and whereas there is no allegation against the present applicant of having participated. It also appears that even thereafter, the first informant had, after returning to Ahmedabad, stayed in the residential accommodation provided by the applicant and other accused.

(4) It also appears that the proximate cause of the FIR being the fact that accused No.5 who was wife of the applicant not appreciate the first informant being provided the residential accommodation and whereas there appears to be some altercation having taken place between the accused No.1 and his wife.

(5) The facts narrated hereinabove prima facie reveal that the first informant was on very friendly terms with the applicant. It also appears that allegation of rape appears to be unjustified, since all the while the first informant, had been enjoying the hospitality of the applicant and other accused, as the case may be, and there does not appear to be any justification for the first informant in continuously accepting the hospitality of the accused, when according to the first informant, she was being subjected to such a heinous crime.

(6) It certainly does not appear that the first informant was not well educated or that she was from an economically or socially weak background, that she had no choice but to accompany the accused including the present applicant.

(7) The allegation of the first alleged rape being video-graphed and the first informant being subjected to blackmail on account of the same, also does not appear to be justified, since there is no material to substantiate the allegation of objectionable video of the first informant having been taken, more particularly the investigation being over and the charge-sheet being filed not mentioning recovery of any video of the like nature.

(8) That the first informant not having clear cause to file the FIR on the given date, except that she had left the residential accommodation provided by the present applicant and other accused on account of altercation/fight between the applicant and his wife.

(9) There being no material even after inquiry/investigation to show that the present applicant was in any way intimidated or threatened at the behest of the accused in general and the present applicant in particular.

13.1 Having regard to the observations with regard to the delay and more particularly considering the fact that the present applicant is in custody since 10.11.2020 and having

regard to the prima facie observation on merits, and considering the aspect that co – accused in this offence as per the allegations levelled in the FIR has already been enlarged on bail, in the considered opinion of this Court, the case for release of the present applicant on regular bail is made out.

13.2 Further considering the allegations that the first informant has been threatened at the instance of the accused, this Court deems it appropriate to impose stringent conditions, to balance equities, while releasing the applicant on regular bail.

13.3 This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of ***Sanjay Chandra v. Central Bureau of Investigation reported in [2012]1 SCC 40.***

13.4 In the facts and circumstances of the case and considering the nature of the allegations made against in the First Information Report, 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.

14. Hence, the present application is allowed. The applicant is ordered to be released on bail in connection with F.I.R. being

C.R. Part-A No.11191030200061 of 2020 registered with Mahila Police Station (West), Ahmedabad City, on executing a bond of Rs.2,00,000/- (Rupees Two Lacs 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] mark presence before the concerned Police Station on every alternate Monday for a period of six months, between 10:00 a.m. and 5:00 p.m. or till the deposition of the first informant is over in the trial court;
- [d] surrender passport, if any, to the lower court within a week;
- [e] not leave the State of Gujarat without prior permission of the Sessions Judge concerned;
- [f] 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;
- [g] not enter into vicinity where first informant is staying or residing.

15. 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.

16. 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.

17. At the stage of trial, the trial court shall not be influenced by any observations of this Court which are of preliminary nature made at this stage, only for the purpose of considering the application of the applicant for being released on regular bail.

18. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent. Direct service is permitted.

DRASHTI K. SHUKLA

(RAJENDRA M. SAREEN,J)