

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION NO. 18413 of 2022**

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ASGAR @ ASTAR SABIRBHAI MAJETHIYA (KHALIFA)  
Versus  
STATE OF GUJARAT

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**Appearance:**

MR PM LAKHANI(1326) for the Applicant(s) No. 1

MRS R P LAKHANI(3811) for the Applicant(s) No. 1

MR HIMANSHU PATEL, APP for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE SAMIR J. DAVE**

**Date : 28/11/2022**

**ORAL ORDER**

1. This is a successive bail application filed by the applicant in connection with F.I.R. registered as C.R. -I No. 47 of 2019 with Amreli City Police Station, District : Amreli, for the offences punishable under Sections 376, (2)(L), 376(2)(J), 376(2)(N), 376(3), 377, 354(A)(D),, 341, 504, 506(2), 34 and 114 of the IPC and Sections 4, 6, 8, 12, 14, 17, 18 of the POCSO Act, Sections 67, 67(A), 67(B) of the Information Technology Act.

2. Learned advocate for the applicant submits that applicant is innocent person and has not committed any crime as alleged in the FIR. It is submitted that no prima facie case is made out and no evidence is adduced on record until now against the present applicant. It is also submitted that without admitting but merely for the sake of arguments even if the case of the prosecution is believed to be true in its entirety,

then too it amounts a non-penetrative offence which under Section 7 of the POCSO Act and for which the maximum punishment provided by the statute is for the period of 5 years, whereas the applicant is in jail since 02.07.2019, hence he is in custody more than 3 years for the alleged offence and the trial is not likely to be completed in near future and therefore, detaining the applicant for such a long time would not be served any purpose. Hence, it is requested by learned advocate appearing for the applicant to allow present application by releasing the applicant on bail.

3. Learned APP appearing for the respondent-State has objected the submissions made by learned advocate appearing for the applicant, submitting that the applicant has committed serious offence and the trial Court has rightly rejected the prayer of the applicant to release him on bail. It is further submitted by the learned APP that there is prima-facie case against accused, if the accused be released, then he would indulge into similar activities again. Hence, it is requested by learned APP appearing for the respondent State not to entertain the present application.

4. Having heard learned advocates appearing for the respective parties as well as considering the FIR and also the observations made by learned 3<sup>rd</sup> Additional Sessions & Special Judge (POCSO), Amreli while rejecting the application for regular bail and considering the involvement of the applicant and considering the papers of charge-sheet and report of the Investigating Officer, this Court is fully in agreement with the observations made by the learned 3<sup>rd</sup> Additional Sessions &

Special Judge, more particularly, seriousness of offence. This application is also required to be rejected on one more ground that there is no change in circumstance and therefore, this Court is not inclined to exercise its discretion in favour of the applicant. Hence, the present application is hereby rejected. Rule is discharged.

SALIM/

**(SAMIR J. DAVE,J)**