

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER CHARGESHEET) NO. 22633 of 2024**

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YASIN @ BHURO OSMANBHAI KAIYDA
Versus
STATE OF GUJARAT

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Appearance:

MR PRAVIN GONDALIYA(1974) for the Applicant(s) No. 1
MR HK PATEL, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 10/12/2024

ORAL ORDER

[1.0] **RULE.** Learned APP waives service of rule for the respondent-State.

[2.0] The present successive bail application is filed under Section 483 of the Bharatiya Nyaya Suraksha Sanhita, 2023 (for short "BNSS") for regular bail in connection with **FIR being C.R. No.11208001240038 of 2024** registered with **Mahila Police Station, Rajkot City**, for the offence under Sections 376(2) (N), 323 and 504 of Indian Penal Code, 1860.

[3.0] Learned advocate appearing on behalf of the applicant submits that applicant is innocent and has been falsely implicated in the offence. Investigation is over and chargesheet has been filed. Allegation against the applicant is that, the applicant has forcefully developed physical relationship against the wish and will of the complainant and the applicant has impersonated himself as Prajapati (Hindu) and in this regard, FIR came to be filed. He has submitted that, the complainant is a widow and she has developed relationship with the applicant on her own wish for and continued for 9 years and from said relationship, three children were born. The applicant was arrested on 23.04.2024 and meanwhile, the complainant stayed with mother of the applicant. Considering the same, the applicant

may be enlarged on regular bail by imposing suitable conditions.

[4.0] Learned APP appearing on behalf of the respondent-State has opposed the present application and submitted that, the applicant by impersonating himself as Hindu and therefore, the applicant has committed offence as alleged in FIR. Considering the same, she prays not to allow application.

[5.0] While granting bail, the Court has to consider the involvement of the accused in the alleged offence, the jurisdiction to grant bail has to be exercised on the basis of the well settled principles having regard to the facts and circumstances of each case and the following factors are to be taken into consideration while considering an application for bail: (i) the nature of accusation and the severity of the punishment and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses and threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his absconcence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations are required to be considered.

[6.0] I have heard the learned advocates appearing on behalf of the respective parties and perused the investigation papers. Following aspects have been considered:

- (1) Investigation is over and chargesheet has been filed;
- (2) Applicant is in jail since 23.04.2024.
- (3) There is nothing to be recovered or discovered from the applicant;
- (4) The complainant and complainant were in relationship for 9 years and from the said relationship, three children were born.
- (5) The complainant was fully aware about the past antecedents of the applicant, she continued to live with the applicant for 9 years.
- (6) Merely having past antecedents is not a ground to refuse bail,

especially considering that the accused is presumed innocent until proven guilty beyond a reasonable doubt.

[7.0] This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra vs. Central Bureau of Investigation** reported in [2012]1 SCC 40 as well as in the case of **Gudikanti Narasimhulu And Ors vs. Public Prosecutor, High Court of Andhra Pradesh** reported in (1978)1 SCC 240. Obviously, the conclusion of trial will take time and keeping the accused behind the bars is nothing but amounts to pre-trial conviction and therefore, considering the celebrated principle of bail jurisprudence is that "*bail is a rule and jail is exception*" as well as the concept of personal liberty guaranteed under Article 21 of the Constitution of India, present application deserves consideration.

[8.0] In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the FIR, without discussing further on merit, *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. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with **FIR being C.R. No.11208001240038 of 2024** registered with **Mahila Police Station, Rajkot City** on executing a personal bond of Rs.25,000/- (Rupees Twenty-five Thousand only) with one local 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 & shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;
- (c) surrender passport, if any, to the Trial Court within a week;
- (d) not to leave State of Gujarat without prior permission of the Trial Court concerned;

- (e) mark presence before the concerned police station once in a month for a period of six months;
- (f) furnish the Aadhar card, email ID/present address of his residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence/contact number without prior permission of Trial Court;
- (g) if the applicant is found to be indulged in any illegal activities in future, the trial Court concerned will be free to issue warrant and cancel the bail granted to the applicant.

[9.0] 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.

[10.0] 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.

[11.0] 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.

[12.0] Rule is made absolute to the aforesaid extent. Direct service is permitted.

(HASMUKH D. SUTHAR,J)

SUCHIT