

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 11016
of 2024**

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CHANDRABHAI VARIYABHAI RATHOD
Versus
STATE OF GUJARAT

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Appearance:

MR UM SHASTRI(830) for the Applicant(s) No. 1

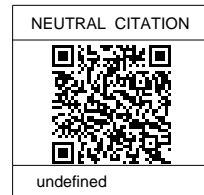
MS MAITHILI MEHTA, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY

Date : 19/06/2024**ORAL ORDER**

1. **RULE.** Learned APP waives service of rule for the respondent-State.
2. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant-accused has prayed for enlarging the applicant on anticipatory bail in connection with the FIR being **C.R. No.11821014240149 of 2024** registered with **Dhanpur Police Station, Dahod .**
3. Heard learned advocate for the applicant and learned APP for the respondent - State.
4. Learned advocate for the applicant has submitted that the applicant is apprehending arrest in connection the aforesaid FIR and in this connection the earlier application filed by the applicant before the learned Sessions Court came to be dis-

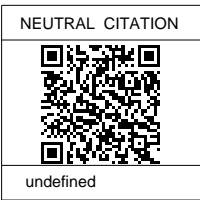


allowed.

5. Learned Additional Public Prosecutor appearing on behalf of the respondent – State has opposed grant of anticipatory bail, inter alia, contending that the present applicant had subjected the prosecutrix to physical relation without her consent in the night hours when everybody in the family was sleeping. Initially, she did not have courage to lodge the FIR, however, upon consulting the Sarpanch of the village, she got the courage and after three months of the incident, she had lodged the present FIR. She, therefore, submitted to dismiss the present application.

6. Heard learned Advocates for the parties and perused the material available on record. At the outset, it is required to be noted that the alleged incident had taken place on 10.11.2023, where the FIR in question came to be lodged on 09.02.2024. The delay is sought to be explained by the first informant stating that she had no courage for lodging the FIR. However, after consulting the Sarpanch, she had lodged the FIR. So far the merits of the matter are concerned, it is alleged against the present applicant that he had forcibly established physical relations with the prosecutrix in the night hours. However, the prosecutrix, after the incident, did not inform anybody in the village about the incident nor did she lodge any complaint immediately. The explanation, which is sought to be given for delay in the FIR does not appear to be plausible.

7. This Court has considered following aspects,



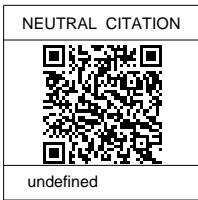
(a) as per catena of decisions of Hon'ble Supreme Court there are mainly two factors which are required to be considered by this court;

- (i) prima facie case
- (ii) requirement of accused for custodial interrogation.

Therefore, in the facts and circumstances of the present case, this court is inclined to consider the case of the applicant.

8. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors.**, reported at [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of **Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab**, reported at (1980) 2 SCC 565. Further, this Court has also taken into consideration the ratio laid down in the case of **Sushila Aggarwal and Ors. v. State (NCT of Delhi) and Anr. in Special Leave Petition No. 7281-7282/2017 dated 29.01.2020.**

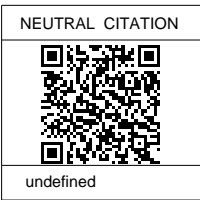
8.1 This court has also considered the judgment in the case of **Arnesh Kumar v. State of Bihar** reported in (2014) 8 SCC 273, wherein the Hon'ble Apex Court has observe that whenever there is punishment of 7 years, then the court would be liberal to exercise the discretion. Further, by exercising the discretion under Section 438 Cr.P.C, the doors of remand by the Investigating Officer is open and therefore also this court is



inclined to exercise powers under Section 438 of Cr.P.C.

9. In the result, the present application is allowed. The applicant is ordered to be released on anticipatory bail in the event of arrest in connection with a FIR being No. **C.R. No.11821014240149 of 2024** registered with **Dhanpur Police Station, Dahod** on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of like amount on the following conditions;

- (a) shall cooperate with the investigation and make available for interrogation whenever required;
- (b) shall remain present at concerned Police Station on **26.06.2024** between 12.00 Noon and 2.00 p.m.;
- (c) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
- (d) shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
- (e) shall at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change residence till the final disposal of the case till further orders;



(f) shall not leave India without the permission of the concerned trial court and if having passport shall deposit the same before the concerned trial court within a week; and

10. At the trial, the concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.

11. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(M. R. MENGDEY,J)

GIRISH