

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL MISC.APPLICATION (FOR SUCCESSIVE  
REGULAR BAIL - AFTER CHARGESHEET) NO. 7667 of 2024**

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TUSHAR SARJANSINH BARIYA  
Versus  
STATE OF GUJARAT & ANR.

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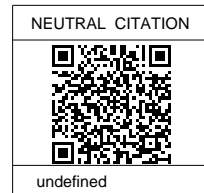
Appearance:

VASIMRAJA A KURESHI(8609) for the Applicant(s) No. 1  
NOTICE SERVED for the Respondent(s) No. 2  
MR L B DABHI, APP for the Respondent(s) No. 1

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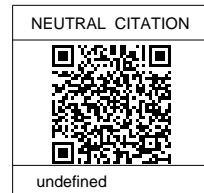
**CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**  
**Date : 09/05/2024**  
**RAL ORDER**

1. Learned advocate Ms. Kiran Udasi submits that she has got instructions to appear on behalf of respondent No.2 - original complainant. She is permitted to file her Vakalatnama in the Registry. Registry to accept the same.
2. Rule. Learned APP waives service of notice of Rule for and on behalf of respondent - State.
3. The present successive application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with **C.R.No.11196012230335 of 2023 registered with Fatehganj Police Station, Vadodara City** for the offence punishable under Sections 363, 366, 376(1), 376(3) and 114 of the Indian Penal Code, under Section 4, 5(L), 6, 8 and 12 of the POCSO Act and under Sections 3(2)(V), 3(1)(w)(i) of Atrocities Act.
4. Learned advocate appearing on behalf of the applicant

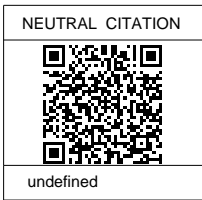


submits that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions. It is submitted that applicant has been arrested on 08.07.2023 and since then he is in judicial custody. It is further submitted that investigation is already concluded and present application is filed after submission of charge-sheet. Learned advocate for the applicant submits that earlier an application seeking bail was preferred after submission of charge-sheet and the same was withdrawn with a liberty to file fresh application before this Court after recording the deposition of the victim girl. The deposition of the victim girl is recorded by the learned Trial Court wherein she has not supported the case of the prosecution and turned hostile. The copy of the deposition of the victim girl is tendered which is ordered to be taken on record. It is further submitted that dispute is amicably settled between the parties outside the court and therefore complainant has filed an affidavit inter alia stating that she has no objection if the applicant is enlarged on bail. Learned advocate Ms. Kiran Udasi reiterates the said fact and submits that the matter is settled between the parties outside the Court and therefore complainant has filed an affidavit, wherein she has specifically stated that she has no objection if the applicant is released on bail.

5. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.
6. Learned advocates appearing on behalf of the respective parties do not press for further reasoned order.



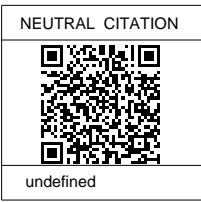
7. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers of the investigation and considered the allegations levelled against the applicant and the role played by the applicant. It is found out from the record that this is the successive bail application. The earlier application was withdrawn with a liberty to file afresh after recording the deposition of the victim girl. Now, the deposition of the victim is recorded and she has not supported the case of the prosecution and turned hostile. The investigation is already over and charge-sheet is filed. The applicant is in jail since 08.07.2023. Thus, considering the aforesaid factual aspects, I am inclined to consider this application.
8. 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 as well as in case of **Satender Kumar Antil v. Central Bureau of Investigation & Anr.** reported in **(2022)10 SCC 51**.
9. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the FIR, 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.
10. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with **C.R.No.11196012230335 of 2023 registered with Fatehganj Police Station, Vadodara**



**City** on executing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand 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] surrender passport, if any, to the lower court within a week;
- [d] not leave the State of Gujarat without prior permission of the Sessions Judge concerned;
- [e] mark presence before the concerned Police Station on alternate Monday of every English calendar month for a period of six months between 11:00 a.m. and 2:00 p.m.;
- [f] furnish the present 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 this Court;

11. 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 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.



12. 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.
13. The present application stands allowed accordingly. Rule is made absolute. Direct service is permitted.

LAVKUMAR J JANI

**(DIVYESH A. JOSHI,J)**