

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - BEFORE
CHARGESHEET) NO. 9603 of 2024

=====

DIVANSINH BHARATBHAI BHURSINGBHAI MACHHAR
Versus
STATE OF GUJARAT

=====

Appearance:
MR A A ZABUAWALA(6823) for the Applicant(s) No. 1
MS KRING CALLA APP for the Respondent(s) No. 1

=====

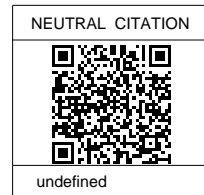
CORAM:HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 24/05/2024

ORAL ORDER

[1] **RULE.** Learned Additional Public Prosecutor waives service of notice of Rule on behalf of the respondent- State of Gujarat.

[2] The present application is filed under Section 439 of the Code of Criminal Procedure by the applicant for regular bail in connection with an FIR No.11187007231023 of 2023 registered with Santrampur Police Station, District: Mahisagar for the offences under Sections 363, 366, 376(2) (N) of Indian Penal Code and section 4, 5(L), 6



and 17 of the POCSO Act, 2012.

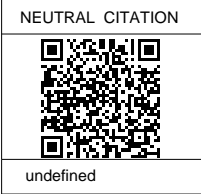
[3] Learned advocate appearing for the applicant has submitted that the present applicant is an innocent person and is falsely implicated in the present complaint and he is in jail since 03.04.2023. It is submitted that there is no evidence with the prosecution to connect the present applicant with the incriminating crime and on bare perusal of the FIR, there is no role of the applicant emerge, and there is no single allegation against the present applicant for any force to the complainant and applicant is not directly connected with the offence. It is further submitted that the investigation is over qua the present applicant and only charge-sheet is pending to be filed before the concerned Court. It is also submitted that the applicant is having good reputation in the society and no useful purpose would be served by keeping the applicant in jail for indefinite period. It is



further contended that the applicant is ready and willing to abide by all the conditions that may be imposed by this Court, if released on bail.

[4] Per contra, learned Additional Public Prosecutor appearing on behalf of the respondent-State vehemently opposed the present application for grant of regular bail and submitted that looking to the nature and gravity of the offence, this Court may not exercise the discretion in favour of the applicant and the application may be dismissed.

[5] I have heard learned advocates appearing on behalf of the respective parties. Learned advocates appearing on behalf of the respective parties do not invite reasoned order. It appears that the role attributed to the present applicant is that of an abettor and the main accused has already granted bail by order dated 09.05.2024 in Criminal Misc. Application No.8913 of 2024.



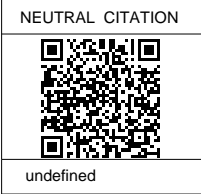
Considering this aspect, the application deserves consideration. This court has also considered the following aspects:

(a) As per catena of decisions of Hon'ble Supreme Court, there are mainly 3 factors which are required to be considered by this court i.e. prima facie case, availability of applicant at the time of trial and tampering and hampering with the witnesses by the accused.

(b) The role attributed to the present applicant is that of an abettor.

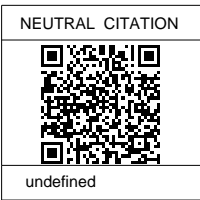
(c) That the learned advocate for the applicant has submitted that the applicant is not likely to flee away.

(d) That the applicant is in custody since 03.04.2023.



(e) The law laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra v. C.B.I.** Reported in (2012) 1 SCC 40.

[6] In the facts and circumstances of the case and considering the nature of allegations made against the applicant in the FIR, I am of the opinion that discretion is required to be exercised in favour of the applicant and enlarged the applicant on regular bail. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with an offence being FIR No.11187007231023 of 2023 registered with Santrampur Police Station, District: Mahisagar for the offences under Sections 363, 366, 376(2) (N) of Indian Penal Code and section 4, 5(L), 6 and 17 of the POCSO Act, 2012 on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of the like amount to the

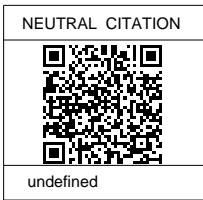


satisfaction of the learned Trial Court and subject to the conditions that the applicant shall;

[a] 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 any Police Officer or tamper with the evidence;

[b] maintain law and order and not to indulge in any criminal activities;

[c] furnish the documentary proof of complete, correct and present address of residence to the Investigating Officer and to the Trial Court at the time of executing the bond and shall not change the residence without prior permission of the trial Court;

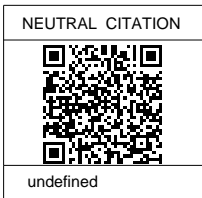


[d] provide contact numbers as well as the contact numbers of the sureties before the Trial Court. In case of change in such numbers inform in writing immediately to the trial Court;

[e] file an affidavit stating his immovable properties whether self acquired or ancestral with description, location and present value of such properties before the Trial Court, if any;

[f] not leave the State of Gujarat without prior permission of the Sessions Judge concerned;

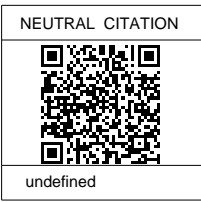
[g] mark presence before the concerned Police Station on every Monday of each English calendar month for a period of three months and thereafter, alternate



Monday for a period of six months,
between 11:00 a.m. and 2:00 p.m.;

(h) surrender passport, if any, to the
Trial Court within a week. If the
Applicant does not possess passport,
shall file an Affidavit to that effect.

[8] 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 learned 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. At the trial, learned 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.

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

Pankaj

(PRANAV TRIVEDI,J)