

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 7330 of 2022

RAHULJI DAHYAJI VAGHANIYA

Versus

STATE OF GUJARAT

Appearance:

MR.HARDIK BHARHMBHAT(3741) for the Applicant(s) No. 1

MR RONAK RAVAL ADDITIONAL PUBLIC PROSECUTOR for the Respondent(s)
No. 1

CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 29/07/2022

ORAL ORDER

1. Heard learned Advocate Mr. Hardik Bharhmbhatt on behalf of the applicant and learned Additional Public Prosecutor Mr. Ronak Raval on behalf of the respondent-State.

2. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant – original accused prays for being released on anticipatory bail in connection with **FIR No. 11195035210939 of 2021** registered with **Palanpura Taluka Police Station, District: Banaskantha** on 16.10.2021 for offences punishable under Sections 363 and 366 of the Indian Penal Code and Section 18 of the POCSO Act.

3. Learned Advocate submits the nature of allegations are such for which custodial interrogation at this stage may not be necessary. Besides, the applicant is available during the course of investigation and will not flee from justice. In view of the above, the applicant may be granted anticipatory bail.

Learned Advocate for the applicant on instructions states that the

applicant is ready and willing to abide by all the conditions including imposition of conditions with regard to powers of Investigating Agency to file an application before the competent Court for his remand. He would further submit that upon filing of such application by the Investigating Agency, the right of applicant-accused to oppose such application on merits may be kept open.

4. Learned Additional Public Prosecutor Mr. Ronak Raval on behalf of respondent- State opposed the grant of anticipatory bail looking to the nature and gravity of the offence.

5. Having considered the submissions made by learned Advocate Mr. Bhrahmbhatt and learned APP Mr. Raval and having considered the documents on record, following aspects are considered by this Court:

[1] That the prosecutrix at the relevant point of time was 17 years, 11 months and 15 days.

[2] It appears that the prosecutrix and the present applicant were engaged to get married and whereas it appears that on account of some difference of opinion the parents of the prosecutrix were intending to break the engagement.

[3] It also appears that the prosecutrix had gone to the house of the present applicant and had asked him to elope with her.

[4] It also appears that subsequently, upon the prosecutrix attaining the age of majority, the applicant and the prosecutrix have got married.

6. Having regard to the circumstances in question, and considering the law laid down by the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.** reported in (2011)1 SCC 694, this Court is inclined to consider this application.

7. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to **FIR No. 11195035210939 of 2021** registered with **Palanpura Taluka Police Station, District: Banaskantha** the applicant shall be released on bail on furnishing 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 himself available for interrogation whenever required;
- (b) 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;
- (c) 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;
- (d) shall at the time of execution of bond, furnish the address to the Investigating Officer and the Court concerned and shall not change his residence till the final disposal of the case or till further orders;
- (e) shall not leave India without the permission of the Court and, if having passports shall surrender the same before the Trial Court within a week.

8. Despite this order, it would be open for the Investigating Agency to

file an application for police remand of the applicant to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. The applicant shall remain present before the learned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the learned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police remand. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if ultimately granted, and the power of the learned Magistrate to consider such a request in accordance with law. It is clarified that the applicant, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

9. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the applicant on bail. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(NIKHIL S. KARIEL,J)

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