

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - BEFORE CHARGESHEET) NO. 17223 of 2023**

KETKIBEN VASUDEV VYAS

Versus

STATE OF GUJARAT

Appearance:

MR. MIHIR THAKORE, SENIOR ADVOCATE with MR. MEETKUMAR J PANDIT(9479) for the Applicant(s) No. 1

MR. L.B.DABHI, APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY**Date : 10/11/2023****ORAL ORDER**

1. The Applicant has filed this Application under Section 439 of the Code of Criminal Procedure for enlarging the Applicant on Regular Bail in connection with FIR being C.R. No. 11215002231146/2023 registered with Anand Town Police Station, Anand.
2. Heard learned Senior Advocate Mr. Mihir Thakore appearing with learned Advocate Mr. Meetkumar J. Pandit for the Applicant and learned APP Mr. L.B.Dabhi appearing on behalf of the Respondent – State of Gujarat.
3. Learned Senior Advocate Mr. Mihir Thakore has submitted that, by registering the present FIR, the present Applicant has been accused of committing an offence punishable under Sections 389, 354(c), 120(B) of the Indian Penal Code and Sections 66(E) and 67(A) of the Information Technology Act. He submitted that Section Section 354(c) provides punishment for the offence of Voyeurism. The present Applicant being a lady, the offence punishable under Section 354(c) of IPC is not made out against her.

3.1 So far as the aspect of the offence punishable under Section 389 of the IPC is concerned, the then District Collector cannot be said to have been threatened by the present Applicant and the other coaccused persons for being booked for an offence of rape, as, from the facts of the case, any rape having been committed upon a lady in question, does not emerge. On the contrary, the then District Collector and the girl in question, who has been cited as a secret witness, were in touch with each other and there were mobile conversations between them, and therefore, the offence punishable under Section 376 of IPC cannot be said to have been committed, and therefore, there was no question of the present Applicant having threatened the then District Collector for having committed an offence punishable under Section 376 of IPC.

3.2 It is submitted that the Applicant is a lady and was working as a Resident Additional Collector of Anand District at the relevant time. Section 437 of the Code of Criminal Procedure carves out an exception so far as female accused persons are concerned and, in view of the said provision, the present Applicant is entitled to be enlarged on bail. Learned Senior Advocate for the Applicant has further submitted that none of the witnesses, whose statements have been recorded during the course of investigation, have stated anything about the involvement of the present Applicant in the offence in question. He also submitted that the present Applicant herself is a Class-I Officer and her husband is also working as Deputy Superintendent of Police, and therefore, there was no reason for the present Applicant to commit the present offence. He therefore submitted to allow the present Application and enlarge the Applicant on bail subject to suitable conditions.

4. Learned APP on the other hand has submitted that since, pending the Application, charge sheet has been filed, the Applicant should be relegated to the Sessions Court. He has further vehemently opposed the present application for grant of regular bail inter alia contending that a conspiracy was hatched at

the behest of the present Applicant for commission of the offence in question. The present Applicant and the other coaccused persons wanted the then District Collector to clear some controversial files regarding NA Permission, and therefore, to pressurise the then District Collector, Spy Cameras were affixed in the chamber of the then District Collector and, a lady, who is cited as a secret witness in the charge sheet, was made to visit the then District Collector and develop an intimacy with him. Accordingly, the said lady had gone to the chamber of the then District Collector and the then District Collector and the said lady were captured in a compromising condition in the Spy Cameras which were installed in the chamber of the then District Collector. On the basis of the said video footages, the present Applicant went to the then District Collector and had threatened him that if he does not clear the files as desired by her and the other coaccused persons, he will be falsely implicated in an offence punishable under Section 376 of IPC on the basis of the said video footages. Thus, an offence punishable under Section 389 of IPC has been clearly made out against the present Applicant. The said offence is punishable with imprisonment which may extend to 10 Years. Thus, this is a serious offence and the present Applicant being the kingpin for commission of the offence in question, the present Application should be dismissed.

5. Heard learned Advocates for the parties and perused the record.

6. The circumstances in which the present offence came to be registered are shocking. The present Applicant, who was, at the relevant time working as Resident Additional Collector at the Collector office, District Anand, got installed Spy Cameras in the chamber of the then District Collector. Thereafter a lady was made to visit the office of the Collector and she was instructed to develop intimacy with the then District Collector and she was promised some payment also. On the basis of the said instructions given to her, the lady had visited the chamber of the then District Collector on several occasions and both

of them were found to be physically involved and they were captured in a compromising condition in the Spy Cameras which were installed in the chamber of the then District Collector at the behest of the present Applicant. On the basis of the video footages so captured in the Spy Cameras the present Applicant went to the chamber of the then District Collector and asked him to clear certain controversial files pertaining to NA Permission or else he would be implicated in an offence punishable under Section 376 of IPC.

6.1 The Appliant herein being a public servant, it was her bounden duty to protect and work in furtherance of public interest. However, instead of doing so, the Applicant herein had indulged into an act which has tarnished the image of a public authority. The then District Collector, Anand is equally responsible for the same.

6.2 It emerges from the record that the present Applicant had hatched the said conspiracy since the then District Collector was asking her to accompany him for dinner and he also wanted to visit her at her residence.

6.3 If the present Applicant found the conduct of the then District Collector to be objectionable, the mechanism for ventilating such grievance is in place in all public offices and, if it was really the case, she could have taken recourse to the said mechanism.

6.4 From the record it appears that coaccused Harishbhai Harmanbhai Chavda is a Practicing Advocate and his field of practice is on Revenue Laws and was actively practicing in the Revenue Matters in the office of the then District Collector, Anand. From the material available on record, it appears that five controversial files pertaining to NA Permission belonged to his clients and he had charged handsome amount from his clients for getting the NA Permission in the said land matters from the office of the then District

Collector. Moreover, from the facts emerging on record, as discussed herein above, the entire conspiracy was hatched to get the said files cleared from the then District Collector, Anand. The secret witness was also engaged for the very purpose as she was instructed to get those files cleared at any cost.

6.5 From the statements of the persons who were interested in getting the NA Permission for the lands in question, it appears that the said coaccused had charged money from them for the said purpose and, after the lands in question were converted from New Tenuure to Old Tenure, he had boasted that because of his connections in the Collector Office, the said conversion was made.

6.5.1 Despite these facts, it is really surprising to note that the offence punishable under the provisions of Prevention of Corruption Act has not been invoked in the present case for the reasons best known to the prosecution nor any investigation has taken place on this aspect.

6.6 It is also surprising to note that though it is apparent from record that the then District Collector had misused his office premises for sexually exploiting the woman, no offence, whatsoever has been registered against him.

7. As discussed hereinabove, though from the facts narrated in the FIR and the other material emerging from record, the offence appears to be very serious, the Sections which are invoked against the accused persons are Sections 389, 354(c) and 120B of IPC and Sections 66(E) and 67(A) of the Information Technology Act.

7.1 The offence punishable under Section 389 of IPC though punishable with imprisonment which may extend to 10 Years, the same is made bailable.

7.2 The offence punishable under Section 354(c) is punishable with

imprisonment which may extend to 3 Years. So far as the present Applicant is concerned, she cannot be said to have committed an offence punishable under Section 354 of IPC as she is a lady.

7.3 The offence under Section 66(E) of the Information Technology Act is made punishable with imprisonment which may extend to 3 Years and, for the offence under Section 67(A) of the Information Technology Act, the offence is made punishable with imprisonment which extent to 5 Years.

8. The present Applicant having been accused of commission of the aforesaid offences, the investigation is over and charge sheet is filed.

9. It is required to be noted at this stage that when the present Application was filed, investigation was in progress. However, pending the present Application, charge sheet came to be filed. Learned APP therefore contended that, since pending the Application, charge sheet has been filed, the Applicant should be relegated to approach the lower court for bail after filing of the charge sheet.

9.1 When this Court is allowing the Application filed by the other coaccused persons, there is no point in relegating the present Applicant to approach the Sessions Court only for the sake of formality.

10. In the aforesaid circumstances, 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 accused at the time of trial and tampering and hampering with the witnesses by the accused.

(b) That the learned Senior Advocate for the Applicant has submitted that

the Applicant Accused is not likely to flee away.

(c) 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.**

11. Having heard the learned Advocates for the parties and perusing the record produced in this case as well as taking into consideration the facts of the case, nature of allegations, gravity of accusation, availability of the Applicant Accused at the time of Trial etc. and the role attributed to the present Applicant accused, the present Application deserves to be allowed and accordingly stands allowed. This Court has also gone through the FIR and police papers and also the earlier order passed by the learned Sessions Court where the learned Sessions Judge has disallowed the bail Application at initial stage. The Applicant Accused is ordered to be released on bail in connection with the aforesaid FIR on executing a personal bond of Rs.10,000/- with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that she 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 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 India without prior permission of the Trial Court
- (g) 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.
- (h) not enter Anand City till conclusion of trial except for attending the court proceedings.

12. Bail bond to be executed before the Trial Court having jurisdiction to try the case. It would be open for the Trial Court concerned to give time to furnish the solvency certificate if prayed for.

13. If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities will release the Applicant forthwith only if the Applicant is not required in connection with any other offence for the time being.

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

15. Rule is made absolute. Direct service permitted.

J.N.W

(M. R. MENGDEY, J)