

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 2578 of 2022

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PURNESH ISHVARBHAI MODI
Versus
STATE OF GUJARAT

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Appearance:

MR HARSHIT S TOLIA(2708) for the Applicant(s) No. 1
for the Respondent(s) No. 2
MR MITESH AMIN, PP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

Date : 07/03/2022

ORAL ORDER

1. This matter is listed on a separate board today by the Registry upon the mentioning made by learned advocate Mr.Tolia before this Court in the morning and the permission granted by this Court.
2. Heard learned advocate Mr.Tolia for the petitioner and learned PP Mr.Amin for respondent-state.
3. Learned advocate for the petitioner submitted that the petitioner is the complainant who has filed complaint under Sections 499 and 500 of the Indian Penal Code against the respondent no.2. It is submitted that the statement of respondent no.2 has been recorded; that during the course of trial, the petitioner has produced electronic evidence which has been exhibited at Exhs.21,26 and 126; that thereafter the evidence is concluded; that thereafter the complainant gave an application Exh.136 before the concerned trial Court for the purpose of enabling the accused person to explain the contents of the CD and/or Pen

Drive and/or such other electronic records relating to the speech of respondent no.2 produced vide Exhs.21,26 and 126 as per the provisions of Section 313 of the Criminal Procedure Code, 1973 (hereinafter referred to as 'the Code'). However, the learned Magistrate, vide the impugned order dated 23.2.2022, rejected the said application. It is submitted that thereafter, the petitioner immediately, on the very same day, gave application Exh.137 and requested the concerned Magistrate Court to adjourn the matter so that the petitioner can challenge the said order by filing petition before this Court. However, the said application was also rejected on the very same day. Copies of the said application and the order passed below it are placed on record at page nos. 91A and 92 of the compilation.

4. At this stage, it is also contended that the learned Magistrate is not granting any adjournment and matter is kept for arguments today. Thus, looking to the urgency of the matter and looking to the issue involved in the present petition, learned advocate for the petitioner requested for grant of stay.

5. At this stage, learned advocate Mr.Tolia has referred to the provisions contained in Section 313 of the Code and thereafter placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of *Dharnidhar V/s State of Uttar Pradesh and Others*, reported in (2010)7 SCC 759, more particularly, paragraph 29 of the said decision, which reads as under:

“29. The proper methodology to be adopted by the Court while recording the statement of the accused under Section 313 of the CrPC is to invite the attention of the accused to the circumstances and substantial evidence in relation to the offence, for which he has

been charged and invite his explanation. In other words, it provides an opportunity to an accused to state before the court as to what is the truth and what is his defence, in accordance with law. It was for the accused to avail that opportunity and if he fails to do so then it is for the court to examine the case of the prosecution on its evidence with reference to the statement made by the accused under Section 313 CrPC.”

Learned advocate, thereafter, contended that the issue involved in the present petition is squarely covered by the aforesaid decision.

6. Learned advocate, thereafter, referred to the decision rendered by this Court in the case of *Balu Ramu Machhi V/s State of Gujarat, reported in 1985(2) GLR 933*, more particularly, paragraph 17 of the said decision.

7. In view of the aforesaid submissions canvassed by learned advocate for the petitioner, Notice returnable on 28.3.2022. Learned Public Prosecutor waives service of notice for respondent-state. Till next date of hearing, ad-interim relief in terms of paragraph 7(C) is granted. Direct service today is granted.

(VIPUL M. PANCHOLI, J)

SRILATHA