

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 5692 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.S. SUPEHIA****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

ARYAN SIRIS GARANGE (ARAYAN SHIRISH GARANGE)
Versus
STATE OF GUJARAT

Appearance:

MR YATIN N. OZA, SENIOR ADVOCATE with MR.ANURAG RATHOR, for
ORTIS LAW OFFICES(12342) for the Applicant(s) No. 1
MR RONAK RAVAL, APP for the Respondent(s) No. 1
MR NISHITH P THAKKAR(2836) for the original first informant

CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA**Date : 07/04/2022****ORAL JUDGMENT**

- (1) **RULE.** Learned Additional Public Prosecutor waives service of notice of rule for and on behalf of respondent – State.

FACTS

- (2) By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant-accused has prayed for bail in connection with the **FIR being C.R. No.11191040220265** of registered with **Sardarnagar Police Station, Ahmedabad City,**

District Ahmedabad for the offences under Sections 363, 366, 376(2)(n), 376(3) of the Indian Penal Code, 1860 (the IPC) as well as sections 4, 6, and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

- (3) The case of the prosecution in brief, as narrated in the FIR, is that an FIR came to be filed by one Sunitaben w/o. Chandubhai Nanakram Sehzapuri, aged about 41 years, *inter alia*, contending that she is residing at the address stated in the FIR with her family and she is a housewife, while her husband is a businessman running a food stall at Revdi Bazaar. It is further stated that she is having two children - son, Santosh, aged 18 years, who is studying in 10th Std. and a daughter, prosecutrix, who is aged 15 years 07 months and 29 days and is studying in the 10th Std. It is alleged that on 14.01.2022 as Uttarayan celebrations were underway, she got suspicious on her daughter and inquired about the same wherein she admitted her relationship with the applicant since one and half years ago. It is alleged that the applicant coerced her to meet again and again. It is alleged that around one year ago (from the date of filing of the present FIR), the applicant had forced the prosecutrix to meet him outside her

society and on the same day, at around 7 p.m., the applicant took her to an open ground in the Naroda GIDC where the applicant, had forced her to have physical relationship and again after one and half months, without her wish, she was forced to have such relationship, and lastly she had physical relations, around last Diwali also. It is alleged that during the last act, the applicant had promised her to marry her and on such wrong pretext, he developed physical relationship. It is alleged that every time the victim resisted the act, the applicant used to threaten her by saying that he will inform her parents regarding their relationship. It is alleged that later on, the first informant consulted her family members whether to file a complaint regarding the incident or not, due to which some delay occurred and later on with these allegations the aforesaid FIR came to be filed against the applicant on 29.01.2022.

SUBMISSIONS

- (4) Learned Senior Advocate Mr.Y.N.Oza for the applicant has submitted that the applicant is born on 23.12.2003 and was a minor at the time when the alleged offence was committed. It is submitted that the applicant was 17 years when the last act is alleged to have been committed. It is also submitted that the

applicant is a young boy, who attained majority after the alleged commission of the offence i.e. on 23.12.2021. It is submitted that the applicant is pursuing his studies in first year B.Com. from Gujarat Arts and Commerce College situated in Ahmedabad and he is apprehending his arrest in connection with the present FIR. It is submitted that the applicant has no past antecedents registered against him. It is submitted that the present case is a classic case of love affair between the applicant and the victim and the FIR has been only filed after the parents of the victim came to know about the relationship of the applicant with the victim and thereby concocted the allegations as enumerated in the FIR.

- (5) Learned Senior Advocate Mr.Y.N.Oza for the applicant has submitted that on 15.01.2022, after the first informant and her family members came to know about the relationship, they had approached the parents of the applicant and the parents of the applicant had given assurance that the applicant would stay away from the victim and ultimately, a so-called compromise / understanding took place between both the parties. It is pertinent to note that the applicant refused the commission of any offence or engaging in any wrong act with the victim.

(6) Learned Senior Advocate Mr.Y.N.Oza for the applicant has submitted on 21.01.2022 once again the first informant with her family members had visited the house of the applicant and it was confronted that the applicant has committed wrongful act on the victim, to which the applicant totally denied the allegation of doing any act. It is submitted that on 27.01.2022 the victim / girl had visited the house of the applicant to meet him at around 12:30 at night. It is submitted that numerous requests were made to the victim to return home as it was late. It is submitted that later on, the parents and other family members of the victim came to the house of the applicant, as aggressors with different weapons such as pipe, sticks, etc. in their hands and caused damage to the private property of the applicant. Thus, he has submitted that the application may be allowed.

(7) In response, learned Advocate Mr.Nishit P. Thakker appearing on behalf of the first informant has submitted that the applicant should not be granted anticipatory bail, since he has developed physical relationship with the prosecutrix on the false promise of marriage. He has submitted that the applicant was a major on 14.01.2022, when the prosecutrix was caught talking on the phone to

the applicant by the first informant. Thus, it is submitted that the application may not entertained.

- (8) Learned APP, while perusing the report of the Investigating Officer, who is present before this Court, has submitted that the applicant was a juvenile when the alleged act was committed by him. He has submitted that at the time of registration of the F.I.R, the applicant was a major. It is submitted that as per the investigation the applicant and the prosecutrix were having a love affair. It is submitted that since the prosecutrix is a minor, the applicant may not be granted anticipatory bail.

CONCLUSION:

- (9) The following observations are made keeping in mind the parameters enunciated by the Supreme Court in the case of Siddharam Satlingappa Mhetre vs State Of Maharashtra And Ors., 2011 (1) SCC 694. This is a case where the minor teenagers have developed the physical relationship being ignorant of the rigors of law and the social fabric to which they are attached. Having love affair with the prosecutrix has turned both punishment and a crime to the applicant. Both of them had ventured on a perilous journey being oblivious

of the fact that one of them will be embroiled in a serious criminal offence.

(10) It is not disputed that the applicant has attained majority after the alleged commission of the offence i.e. on 23.12.2021. The sole incident which led to the registration of the F.I.R is the prosecutrix having being caught talking with the applicant on 14.01.2022. The allegations of having developed physical relationship by the applicant with the prosecutrix are prior to his attaining the age of majority. The first step of turning him into a hardcore criminal will be sending him behind bars. The moment he is allowed to go behind bars, the efforts to make him a good and law abiding citizen will get dented. The applicant is a young student studying in First Year college and it is expected from him to observe and follow the fundamental duties of a good citizen as enshrined in Article 51-A of the Constitution of India. This Court is of the considered opinion that the facts of case are neither shocking nor serious which can impede the grant of bail under the provisions of section 438 of the Cr.P.C.

(11) Learned Senior 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 further submits that upon filing of such application by the investigating agency, the right of the applicant accused to oppose such application on merits may be kept open. Learned advocate, therefore, submits that considering the above facts, the applicant may be granted bail.

(12) Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to grant bail to the applicant.

(13) This Court has also taken into consideration the law laid down by the Apex Court in the case of Sushila Aggarwal vs. State (Nct of Delhi), AIR 2020 SC 831.

(14) In the result, the present application is allowed. The applicant is ordered to be released on bail in the event of his arrest in connection with **FIR being C.R. No.11191040220265 of registered with**

Sardarnagar Police Station, Ahmedabad City, District Ahmedabad on his executing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of like amount on the following conditions that he :

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) shall remain present at the concerned Police Station on **19.04.2022 between 11.00 a.m. and 2.00 p.m.;**
- (c) 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;
- (d) 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;
- (e) 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 till further orders;

- (f) shall not leave India without the permission of the concerned trial court and if having passport shall deposit the same before the concerned trial court within a week.
- (15) Despite this order, it would be open for the investigating agency to apply to the competent Magistrate, for police remand of the applicant, if he considers it proper and just and the Magistrate would decide it on merits. The applicant shall remain present before the concerned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the concerned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining the 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 concerned 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 bail order.

- (16) At the trial, the concerned trial court shall not be influenced by the *prima facie* observations made by this Court in the present order.
- (17) The application is allowed in the aforesaid terms. RULE is made absolute to the aforesaid extent. Registry is directed to send a copy of this order to the concerned authority/court through Fax message, email and/or any other suitable electronic mode.
- (18) Learned advocate for the applicant is also permitted to send a copy of this order to the concerned jail authority and the concerned Sessions Court through Fax message, email and/or any other suitable electronic mode.

Sd/- .
(A. S. SUPEHIA, J)

Bhavesh-[PPS]*