

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, the 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. a

25. Rule made absolute to the aforesaid extent. Direct service is permitted. b

Result:- Bail granted.

**ABC 2016 (I) 358 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT**

(A.J. Desai, J.)

Criminal Misc.Application (For Regular Bail) No.18334 of 2015

Decided on 6 November, 2015 d

NASIRKHAN MUNAVARKHAN BAHADURKHAN PATHAN - Appellant(s).

Versus

STATE OF GUJARAT

- Respondent(s).

Law Covered:- *Indian Penal Code, 1860 – Sections 120(B), 201, 294(B), 323, 328, 354, 376, 384, 506(2)& 507 – Information Technology Act – Sections 25 (1)(b)(a) & 67 (1) – Age of prosecutrix – 21 yrs – Education qualification of prosecutrix – Post Graduation – continued her relationship with the accused for considerable long time i.e. from 2004 to 2014 – FIR was lodged in 2015 – no discovery or recovery of electronic gadgets like Handycam etc. – No discovery of the ornaments – Applicant along with the prosecutrix had visited several Hotels during this period & booked rooms – not raised any alarm about the rape on any of the occasions – Co-accused with similar accusations had been considered for bail – Alleged abettor had been enlarged on anticipatory bail – Held, fit case to exercise the discretion to enlarge the applicant on bail. (Para 7)* e
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Facts:- *The prosecutrix who was doing her post graduation, before 10 years of lodgment of FIR, came into contact with the applicant herein. He took her at his residence on the premise that it was his birth day, and there, she was asked to drink some cold drink pursuant to which she became unconscious. After some time, when she gained consciousness, she found* h

herself without any clothes. She also found that she was subjected to rape by the applicant. When she requested to let her go, he called another person and informed her that the said person had recorded the act of rape in his mobile and threatened her not to disclose the same to anybody otherwise the clippings shall be circulated in the Society. Thereafter, again she was called by the applicant and was subjected to rape giving threats to circulate the said clippings. Thereafter, these types of acts continued, against her will. She also alleged that extortion was made at the instance of the applicant as well as some other accused. It was also alleged in the FIR that the wife and mother of the applicant also compelled her to act according to his wish. Considering all the relevant aspects the bail application was allowed.

Law of relief:- Accused & prosecutrix had visited several Hotels & booked rooms, not raising any alarm about the rape by prosecutrix is fatal to prosecution.

Held:- I have heard learned advocates appearing for the parties and perused the papers of investigation as well as charge- sheet. It is undisputed fact that in the year 2004, when the prosecutrix came into contact with the applicant, she was studying in Post Graduation and was aged about 21 years. It is also undisputed fact that she continued her relationship with the present applicant for considerable long time i.e. from 2004 to 2013 and thereafter also, upto 2014. However, the FIR has been lodged only in the year 2015. It is pertinent to note that the petitioner was subjected to police remand. However, there is no discovery or recovery from the applicant i.e. electronic gadgets like Handycam etc. There is no discovery of the ornaments which are alleged to have been given by the prosecutrix to the applicant. It is also pertinent to note that the papers of investigation suggest that the applicant along with the prosecutrix had visited several Hotels during this period and have booked rooms. However, on none of the occasions, she has raised any alarm about the rape committed on her. I have also considered the fact that co-accused against whom similar accusations have been made have been considered by the coordinate Bench of this Court as well as by the learned Trial Court and those persons who have been arrayed as accused for abetting the offences have been enlarged on anticipatory bail by this Court. (Para 7)

Counsel:- For Appellant(s): Mr N D Nanavaty, Senior Advocate
Assisted By Mr Ruturaj Nanavati, Advocate
For Respondent(s): Kishan J Patel, Advocate & Mr J.K. Shah, APP.

ORDER

A.J. DESAI, J.: - 1. By way of the present application under Section 439 of the Code of Criminal Procedure, 1973, the applicant - accused No.1 has prayed to release him on regular bail in connection with FIR bearing I C.R. No.26 of 2015 registered with Mahila Police Station, Ahmedabad for the offences punishable under Sections 120 (B), 328, 201, 376, 506 (2), 507, 294 (B), 323, 354 and 384 of the Indian Penal Code and Sections 25 (1)(b)(a) and 67 (1) of the IT Act etc.

2. The brief facts arose from the record are as under :-

2.1 That the complainant lodged an FIR with Mahila Police Station of City of Ahmedabad on 14.5.2015 for the above referred offences and alleged that she was subjected to the above referred different types of crimes for the period from the year 2004 to 2015. Accusations have been made against 11 persons. The sum and substance of the FIR is that the prosecutrix who was studying as a student of Master of Commerce (External course) before 10 years of lodgment of FIR i.e. approximately in the year 2004-05, she came into contact with the accused No.1 - applicant herein, namely, Nasirkhan @ Max Munavarkhan Pathan. The said Nasirkhan took her at his residence in the month of November 2004 on the premise that it was his birth day. At that time, she was asked to drink some cold drink pursuant to which she became unconscious. After some time, when she gained consciousness, she found herself without any clothes. She also found that she was subjected to rape by the said Nasirkhan. When she requested to let her go, he called another person, namely, Shubdarkhan. She was informed by Nasirkhan that the said Shubdarkhan had recorded the act of rape in his mobile and threatened her not to disclose the same to anybody, otherwise the clippings shall be circulated in the Society. Thereafter, again she was called by Nasirkhan and was subjected to rape giving threats to circulate the said clippings. Thereafter, these type of acts which were against her will continued till 2008. She has also alleged that extortion was made at the instance of Nasirkhan as well as some other accused. It was also alleged in the FIR that the wife and mother of Nasirkhan also compelled her to act according to the wish of Nasirkhan. It was further alleged that lastly, she was subjected to rape by Nasirkhan in 2013. Since she was fed up with this exploitation, there was no other alternative for her but to lodge the FIR before the Police.

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3. Mr. N.D. Nanavati, learned Senior counsel assisted by learned advocate Mr. Ruturaj Nanavati appearing for the applicant
a would submit that the story put forward by the prosecutrix and the allegations levelled against the present applicant are highly improbable and exaggerated versions have been stated by the complainant. He would further submit that the complainant was aware that the applicant is a married person. However, she continued
b relations with the applicant for considerable long time i.e. from the year 2004 to 2013. Since the complainant was trying to misuse the relationship developed between them, she started making allegations against the relatives of the applicant. He would submit that though
c several allegations with regard to recording of video clippings of the act have been made against the present applicant, there is no discovery or recovery at the instance of either the applicant or from any other accused. He would submit that the applicant has been arrested since 8.5.2015 and upon completion of investigation, charge-sheet has been filed way back on 10.8.2015 and hence, investigation
d qua the applicant is over. He would submit that neither Handycam nor Mobile i.e. electronic gadgets through which the alleged clippings were recorded are discovered from the applicant or from any other accused. As far as the allegation of circulating the video clippings are concerned, such clippings are not collected by the Investigating Agency from any of the Mobiles of the witnesses or from the
e prosecutrix or from any other witness.

4. He would submit that as far as allegation of extortion of money as well as collecting the ancestral ornaments is concerned, there is no discovery of such ornaments from the present applicant.
f He would submit that the applicant might be in relationship with the prosecutrix but that would not amount that she was compelled for physical relationship and an offence of rape was committed by the applicant. He would submit that the allegations have been made against the close relatives of the applicant i.e. wife and the mother of the applicant that they were compelling the present prosecutrix to
g maintain the relationship. However, the same is improbable and unbelievable. He would submit that all accused have been either released on regular bail or anticipatory bail by this Court or by the learned Sessions Court by different reasoned orders since the said
h applications were opposed by the original complainant. He would submit that co-accused, namely, Shaukatkhan @ Bababhai Munavarkhan Pathan against whom allegations of rape has been

made is also released by the learned Additional Sessions Judge, Court No.22, City Civil Court vide order dated 24.9.2015 passed in Criminal Misc. Application No.3599 of 2015 as well as one Jahangirkhan Munavarkhan Pathan against whom allegation of rape has been made has also been considered by the coordinate Bench of this Court vide order dated 30.7.2015 passed in Criminal Misc. Application No.13337 of 2015. He would submit that though the last alleged act of rape has been committed in the year 2013, the FIR in question has been lodged in the year 2015 i.e. after delay of two years. He would, therefore, submit that the FIR has been lodged after inordinate delay which creates doubt about the allegations made against the present applicant. As far as the incident of March 2015 is concerned, the same is concocted one since the brother of the prosecutrix had also developed family relationship with the applicant and was used to attend the family functions of the applicant. In support of this submission, he has produced certain photographs which suggest that the applicant was in company of the brother of the prosecutrix who attended the marriage of the close relative of the applicant. He, therefore, would submit that no offences as alleged have been committed by the applicant. He would submit that the conduct of the prosecutrix itself shows that she was in voluntary relationship with the applicant since she did not raise any alarm for a period of 10 years and has now come forward by filing the FIR with some ulterior motive best known to her.

5. On the other hand, Mr. J.K. Shah, learned Additional Public Prosecutor appearing for the State has vehemently argued that the prosecutrix has come forward after suffering for a considerable long time and has filed a detailed FIR, explaining role played by the applicant - accused. He would submit that the applicant is the main accused who has played active role. He has further submitted that during the course of investigation, several mobile phones have been recovered from different accused persons which have been sent to the Forensic Science Laboratory for analysis. He would further submit that Investigating Agency has collected sufficient material qua the accused which would support the case of the prosecution including the details with regard to the Hotel wherein the applicant herein - Nasirkhan Munavarkhan Pathan had visited along with the prosecutrix where she was subjected to rape. He has, therefore, submitted that serious allegations have been made against the applicant. He would submit that in the month of March 2015, Ibrahim

a had made a phone call to the brother of the prosecutrix giving threats asking his sister to withdraw the case. The said threats were alleged to have been given by the said Ibrahim Vora and the said conversation with the brother of the prosecutrix has been sent to Forensic Science Laboratory. He, therefore, would submit that considering the seriousness of the offences committed by the applicant, the present application may not be entertained and the same may be dismissed.

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e 6. Mr. Kishan J. Patel, learned advocate appearing for the original Complainant has filed today additional affidavit-in-reply of the prosecutrix. He has vehemently opposed this application and submitted on the basis of reply as well as additional reply filed today that serious allegations have been made against the applicant. He would submit that proper investigation has not been carried out by the Investigating Agency and, therefore, the prosecutrix had to file an application being Special Criminal Application No.5686 of 2015 under Article 226 of the Constitution of India before this Court wherein this Court vide order dated 15.10.2015 directed the Investigating Authority to carry out further investigation in the case. He, therefore, would submit that by taking into consideration the recording which is produced along with the affidavit, bail may not be granted to the applicant. He would submit that there are serious disputes about the money between the parties and, therefore, there is material about the extortion made by the applicant. He, therefore, would submit that the application be rejected.

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h 7. I have heard learned advocates appearing for the parties and perused the papers of investigation as well as charge- sheet. It is undisputed fact that in the year 2004, when the prosecutrix came into contact with the applicant, she was studying in Post Graduation and was aged about 21 years. It is also undisputed fact that she continued her relationship with the present applicant for considerable long time i.e. from 2004 to 2013 and thereafter also, upto 2014. However, the FIR has been lodged only in the year 2015. It is pertinent to note that the petitioner was subjected to police remand. However, there is no discovery or recovery from the applicant i.e. electronic gadgets like Handycam etc. There is no discovery of the ornaments which are alleged to have been given by the prosecutrix to the applicant. It is also pertinent to note that the papers of investigation suggest that the applicant along with the prosecutrix had visited several Hotels during this period and have booked rooms. However, on none of the

occasions, she has raised any alarm about the rape committed on her. I have also considered the fact that co-accused against whom similar accusations have been made have been considered by the coordinate Bench of this Court as well as by the learned Trial Court and those persons who have been arrayed as accused for abetting the offences have been enlarged on anticipatory bail by this Court. a

8. Considering the offence as alleged in the FIR and also considering the nature of allegations made in the FIR, I am of the opinion that this is a fit case to exercise the discretion to enlarge the applicant on bail. Hence, the application is allowed and the applicant is ordered to be released on bail in connection with I registered with Mahila Police Station, Ahmedabad, on executing a bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall; b c

[a] not take undue advantage of liberty or misuse liberty;

[b] not act in a manner injuries to the interest of the prosecution and shall cooperate in the investigation; d

[c] surrender passport, if any, to the lower court within a week;

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

[e] mark presence at the concerned Police Station every Monday for a period of three months and thereafter on any day of the first week of each English Calendar month for a period of one year;

[f] furnish the present address of residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court; f

9. 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 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, the trial court shall not be influenced by the observations of preliminary nature, qua the g h

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evidence at this stage, made by this Court while enlarging the applicant on bail.

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10. Rule made absolute to the aforesaid extent. Direct service is permitted.

Result:- Bail granted.

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**ABC 2016(I) 365 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT**

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(Vipul M. Pancholi, J.)
Criminal Revision Application No. 364 of 2007 With Criminal
Revision Application No. 365 of 2007
Decided on 1 February, 2016

BABULAL DHARAMSHIBHAI PATEL - Appellant(s).

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Versus

STATE OF GUJARAT & ANR. - Respondent(s).

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Law Covered:- *Prevention of Food Adulteration Act, 1954 – Section 7(1) r/w 16(1)(a) – Conviction under – Prevention of Food Adulteration Rules, 1955 – Indian Evidence Act, 1872 – Section 45 – Expert opinion – Report of Public Analyst – Method of test – non mentioning of – Non examination of Public Analyst – Held, the method or the test adopted by the public analyst at the time of analyzing the sample in question has not come on record – Violation of PFA Rules – Held, even if undisputed questions of fact and law is raised for the first time before the High Court – Important details in the report of Public Analyst missing – Acquittal. (Para 9, 14 & 15)*

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Facts:- *The Food Inspector collected the sample of curd from the shop of the petitioner. It was revealed in the report of the public analyst that the sample was having milk fat of 2.65% instead of minimum 6% as per PFA limit. The trial Court convicted the applicant-accused for the offence punishable u/s 7(1) r/w 16(1)(a) of the PFA Act and sentenced him.*

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Against the said order, the applicant preferred Criminal Appeal whereas the present respondent no.2-original complainant preferred Criminal Revision Application for enhancement of the sentence on the ground that the trial Court has imposed the sentence less than the minimum provided under the Act. The appellate Court dismissed the Criminal Appeal preferred by the present applicant whereas the Criminal Revision

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