

Reserved On : 04/07/2025
Pronounced On : 11/07/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL APPEAL (REGULAR BAIL - AFTER CHARGESHEET) NO.
788 of 2025**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Sd/-

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Approved for Reporting	Yes	No
		No
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CHANDUBHAI VASHRAMBHAI SARDHARA (PATEL)
Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR. ZUBIN BHARDA, LD. ADV. WITH MR. NIPUL H GONDALIA(6894) for
the Appellant(s) No. 1

MR.KISHAN PRAJAPATI(7074) for the Appellant(s) No. 1

MR AJ YAGNIK(1372) for the Opponent(s)/Respondent(s) No. 2

MR. JAY MEHTA, LD. ADDL. PUBLIC PROSECUTOR for the
Opponent(s)/Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

CAV JUDGMENT

1. Rule returnable forthwith. Learned APP waives service of notice of rule for and on behalf of the respondent-State and learned advocate Mr. A.J. Yagnik waives service of notice of rule for and on behalf of the original complainant;

2. The present appeal is filed under Section 14-A of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023, for regular bail in connection with the FIR being C.R. No.11203007230124 of 2023 registered with the

Bheshan Police Station, Junagadh for the alleged offences as mentioned in the FIR.

3. Learned advocate Mr. Zubin Bharda assisted by learned advocate Mr. Kishan Prajapati and Mr. Nipul Gondalia appearing for the applicant has submitted that in the present case the investigation has already been completed and charge-sheet has also been filed. Learned advocate Mr. Bharda has further submitted that the FIR came to be filed on 01.04.2023 for the incident alleged to have been taken place on 01.03.2023, and as such, there is a gross delay of one month in registering the FIR. Learned advocate Mr. Bharda has also submitted that in the present case, initially the applicant was arrested on 02.04.2023, and thereafter, a settlement took place between the parties, and on the basis of such settlement, consent quashing petition came to be filed before this Court, wherein an affidavit also came to be affirmed by the complainant, and on the basis of such settlement being taken place between the parties, the entire proceedings were ordered to be quashed by this Court, pursuant to which the applicant was set at liberty. However, subsequently, reasons best known to the complainant, she changed her mind, and assailed the aforesaid order before the Hon'ble Apex Court, and the Hon'ble Apex Court remanded the matter back to the High Court for deciding afresh, and therefore, the applicant himself had surrendered before the police authority on 01.02.2025, and since then he is in jail.

4. Learned advocate Mr. Bharda has submitted that, in fact, this is a case of extramarital love affair. Both the applicant and

the complainant are married. He has further submitted that looking to the allegations made in the FIR, the applicant has been raped four to five times during the period of one month, however, the complainant during the said period of one month, kept silence and did not bother to disclose the said fact to anyone even to her husband. He has submitted that it was a consensual relationship between the applicant and the complainant, however, it might be that due to some disputes having been cropped up between the applicant and the complainant or for some other reasons, after one month she disclosed the said fact to her husband by narrating altogether a different story that she is being raped by the applicant. The complainant was working in the field of the applicant, and they were known to each other since long. He has also submitted that it is alleged in the FIR that at one instance when she was sleeping on terrace along with her husband and children, she woke up and went for a natural call, and at that time, the complainant forcibly caught hold her and raped her. The said story is skeptical, as it was a night hours, and she could have resisted and started shouting at that time, did not do so. Learned advocate Mr. Bharda has submitted that the present FIR is an afterthought being filed at the instance of a social worker just to harass the applicant and to extract money from the applicant with an ulterior motive. As stated above, it was a consensual relationship, and they both were major at the time of occurrence of the incident. Moreover, the applicant has fairly conceded at the time of giving his statement before the Doctor they had an intercourse with the complainant, and the same was consensual. He has submitted that there are

contradictory versions coming out from the complainant. Learned advocate Mr. Bharda has submitted that even it is not sure as to when the trial would commence and conclude, and looking to the fact that initially the applicant was arrested on 02.04.2023 and after spending considerable time in judicial custody, on the basis of settlement, he was released, and then upon complainant being turned down from the said settlement, the applicant himself surrendered before the jail authority on 01.02.2025, and since then he is in jail, and as such, keeping the applicant-accused behind the bar for such an indefinite period of time would be nothing but an abuse of process of law.

5. Learned advocate Mr. Bharda has submitted that the applicant-accused is an innocent person against whom a false and frivolous complaint is filed by the complainant, a consensual party, which is nothing but a sheer abuse of process of law. He has further submitted that there was an extramarital love affair between the applicant-accused and the complainant which continued for about one month. Learned advocate Mr. Bharda has also submitted that the complainant voluntarily entered into a physical relationship with the applicant-accused. Even the impugned FIR has also been filed after a period of one month. Thus, according to learned advocate Mr. Bharda, keeping the applicant-accused behind the bar on the basis of such false and frivolous allegations being levelled by the consensual party, would be nothing but a mockery of justice.

6. In such circumstances, referred to above, learned

advocate Mr. Bharda prays that, there being merit in this application, the same be allowed and the applicant be released on bail.

7. But, learned Mr. A.J. Yagnik appearing for the original complainant has stoutly opposed this application. Learned advocate Mr. Yagnik has further submitted that the present applicant is not as innocent as trying to be projected by the learned advocate representing him. He has also submitted that the present matter has a checkered history. Consecutive applications are being preferred by the applicant both before filing of the charge-sheet and after filing of the charge-sheet, which have not been entertained by the court concerned. Learned advocate Mr. Yagnik has submitted that the complainant is an illiterate rustic villager who came here along with her husband to earn her livelihoods, and therefore, she started working in the field of the applicant along with her husband. He has submitted that the applicant is only acquainted with her mother tongue (Adivasi) and she does not know Gujarati, Hindi and English language. However, as she has been staying here in Gujarat since last seven years, she is having a bit knowledge about the Gujarati and Hindi language, but cannot write or read these languages. Learned advocate Mr. Yagnik has submitted that the present applicant is the employer of the complainant, and thus, taking advantage of the same and the social, economical and cultural vulnerability of the complainant, she was being used by the applicant herein under duress and coercion like she is his commodity, and so, being helpless and poor labourer earning her livelihoods from

the field of the applicant, as also failure of her verbal objections during every instance of rape and the silence being kept by her after each instance, is presumed and preserved to be a consent and contribution in the sexual intercourse, which she is strongly denying. Learned advocate Mr. Yagnik has submitted that after the registration of the FIR, all efforts were being made by the applicant by tooth and nail to get himself scot free, however, the complainant herein did not give up, and persisted with the litigation upto the Hon'ble Supreme Court, then back to the Hon'ble High Court, and now again before this Court, which clearly insinuates that how furious the complainant is against the rape committed upon her by the applicant, and she is making all efforts with might and main to get justice for the most heinous offence committed by the accused upon her.

8. Learned advocate Mr. Yagnik has submitted that after the registration of the FIR, the applicant got arrested and sent to the judicial custody, and therefore, the applicant preferred bail application, which was not entertained by the court concerned. Then, subsequently, the applicant preferred a consent quashing petition before this Court relying on one affidavit of settlement purportedly affirmed by the complainant, and on the basis of such affidavit, the said petition came to be allowed and the entire proceedings were ordered to be quashed, pursuant to which, the applicant was set at liberty. However, the truth is that once the complainant was called by one social worker, namely, Devdanbhai at Rajkot who told her that as per the scheme introduced by the Government, the victims of rape

belonging to SC/ST is entitled to get amount of compensation from the Government, and thus, she has to make her thumb impression upon certain documents to be produced for getting the said amount, and accordingly, keeping faith upon the words of the said social worker, the complainant made her thumb impression upon those documents, which documents were later produced before the Court in the form of an affidavit of settlement duly affirmed by the complainant, and as such, this is the real truth behind the matter being settled. Learned advocate Mr. Yagnik has submitted that in a very disgraceful manner, the rival side has made a submission that the complainant has initiated the present proceedings just to extract money from the accused, which is absolutely skeptical, as the complainant has never demanded or accepted any money from the accused to settle the matter. He has submitted that the complainant herein does not know whether any amount has been received by her husband behind her back to settle the dispute, and if received, then under what circumstances the money was taken by her husband, and whether he himself has accepted the money for withdrawing the allegations of rape and resolving the dispute without any consultation with the complainant is an issue to be attended too. He has also submitted that even the complainant was never called in the Court room to ascertain whether she has given any consent or not, and behind all these, one social activist, namely, Devdanbhai has played a very dubious and fraudulent role, who initially pretended himself to be the well wisher of the complainant and helped her in registering the FIR in question, and then turned to be an agent of the accused and

dishonestly and deliberately obtained her signature on the affidavit of settlement, as stated above. He has submitted that all throughout an impression was created that the amount so received is the amount of compensation received from the State Government for a rape victim, however, the picture was altogether different and an independent discourse was taking place with her husband unknown to her, and also by misleading her husband by the said social worker.

9. Learned advocate Mr. Yagnik has submitted that so far as the argument canvassed by learned advocate for the applicant that why the complainant did not resist or shouted or cry for help is concerned, it is submitted that there is a statutory presumption against the very allegation and contention provided for in a proviso to Section 3(1)(W) of the Atrocities Act that remaining silent during the rape in the given circumstances and failure to offer physical resistance therefore cannot be regarded as consent towards the sexual activity. Moreover, the applicant himself has stated in the history before the medical officer that he had an intercourse with the complainant. Thus, looking to the totality of facts and circumstances narrated herein above, coupled with the fact that the complainant is an illiterate villager lady, being misled throughout by one and all, and the fact that she is begging for justice to be given to her since all these years, the present application deserves rejection.

10. The learned APP appearing on behalf of the respondent-State has also opposed grant of regular bail looking to the nature and gravity of the offence. Learned APP has submitted

that considering the role attributed to the applicant-accused as pointed out by the learned counsel for the complainant, this is a fit case wherein discretionary power of this Court is not required to be exercised in favour of the applicant-accused.

11. I have considered the submissions made by the learned counsel for the respective parties.

12. Before delve into the rival submissions made by the respective parties, let us have a look into Section 376 (2)(n) of the IPC, which reads as follows;

“376. Punishment for rape.—

xxx xxx xxx

(2) *Whoever,—*

xxx xxx xxx

(n)*commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.”*

13. Section 376(2)(n) provides that an accused is held to be guilty for the offence of rape when he commits rape repeatedly on the same woman. This is what the said clause says. Now, the question arises is that in what situation the repeated act committed by the accused can be construed as rape. Here, the section is not so clear in this regard, but it can be construed that the case wold fall under such category when the intercourse is being done by the accused by force or by

illegally detaining a girl or a woman under his custody for some period of time and there was no chance for the victim to run away, and when such is the position, then it can be said that the victim is subjected to rape. However, when the said act of sexual intercourse is consistent but not within or at the same place or premises, and the victim is also moving freely during the period between each sexual intercourse, and also had a chance to disclose about such an act being committed upon her to an individual, but she did not, then the said approach of the victim girl can be presumed to be consent, and when there is a slightest element of consent comes into picture, then the balance of convenience automatically goes in favour of the accused while considering the bail application. Here, in the instant case, at the time of the alleged offence, as per the say of the applicants' counsel, the complainant was major, aged about 30 years and was matured enough to understand what is right and what is wrong and what would be the consequences of a particular act being allowed to be done upon her, and any kind of resistance against the said act does not require any particular language to be acquainted with by the complainant, and she just had to make a shouting and crying for help whose husband was just sleeping upstairs, and in the absence of such an action being taken by the victim, it can be presumed that it was a consensual intercourse. That apart, looking to the allegations as stated in the complaint, the same do not make out a case under any of the other categories as mentioned in Section 376, requiring the applicant-accused to further languish in jail.

14. Reverting to the case on hand, the applicant-accused and the complainant was in relationship past one month and she knew the applicant-accused since long time. Moreover, the applicant is languishing in jail since 01.02.2025, and before that, spent considerable period in judicial custody since 02.04.2023 till the proceedings was quashed and then restored by the order of the Hon'ble Apex Court, and as such, considering the period of incarceration already spent by the applicant in two parts, in my opinion, he deserves to be released on bail.

15. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra v. Central Bureau of Investigation**, reported in [2012]1 SCC 40.

16. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the FIR, without discussing the evidence in detail, *prima facie*, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

17. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.11203007230124 of 2023 registered with the Bheshan Police Station, Junagadh, on executing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that

he shall;

- [a] not take undue advantage of liberty or misuse liberty;
- [b] not act in a manner injuries to the interest of the prosecution;
- [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] mark presence before the concerned Police Station on alternate Monday of every English calendar month for a period of six months between 11:00 a.m. and 2:00 p.m.;
- [f] furnish the present address of residence to the Investigating Officer 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;
- [g] not to enter into the revenue limits of Taluka/Village Bheshan for a period of six months, except to mark presence before the concerned police station and to attend the court proceedings;

18. 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.

19. 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.

20. 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. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(DIVYESH A. JOSHI,J)

VAHID