

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR SUCCESSIVE REGULAR BAIL -  
AFTER CHARGESHEET) NO. 20522 of 2023**

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ANJANABEN W/O BHAVINBHAI DEVSHANKARBHAI MODHA  
Versus  
STATE OF GUJARAT

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## Appearance:

MS URVASHI K MEHTA(11469) for the Applicant(s) No. 1  
MR. MANAN MEHTA, LD. ADDL. PUBLIC PROSECUTOR for the  
Respondent(s) No. 1

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**CORAM: HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**

**Date : 08/12/2023**

**ORAL ORDER**

1. The present successive application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the FIR being C.R. No.I-11208057230026 of 2023 registered with the Rajkot Cyber Crime Police Station, Rajkot of the offence punishable under Sections 354(a)(c), 376, 376(D), 498(a), 506(2), 508, 509, 34, 114 and 201 of IPC as well as Sections 66(e) and 67(a) of I.T. Act.

2. 'FACTUAL EXPOSE' as borne out from the pleadings are as follows:

2.1 That the complainant got married with the son of the applicant-accused somewhere in the year 2022 and, thereafter, she started living at her matrimonial home. There are in all total three members at her marital home i.e, mother-in-law, father-in-law and her husband. In the wedlock, two baby boys were born. It is alleged that after sometime of the marriage, the father-in-law started instigating her husband to

record the nude photographs and videos of the complainant so that they can upload it on one particular porn website. Accordingly, the husband started recording her nude videos in his mobile and thereafter forwarded it on the mobile of her father-in-law. The mother-in-law of the complainant was also aware about the same and all these acts were being done in the presence of the mother-in-law also. As per the say of the complainant, as her marital family was in desperate need of money to prevent their hotel being sold out by the other partners, they decided to record the nude videos of the complainant to upload on one porn website against which they will get money. Therefore, the husband of the complainant started recording their intimate moments in the camera of his mobile. The complainant told her not to do so, however, her husband said her to do whatever his father is saying. She then complained to her mother-in-law, who also sided with her son an husband and told the complainant to act as per the say of her son and husband. Not knowing what to do, complainant merely relented. It is also alleged that when the complainant was alone at home, the father-in-law was molesting her. The husband of the complainant made her to do things, which according to the complainant, were unnatural. Thus, to fulfill their common intention, all the accused persons, in connivance with each other, have committed the said offence. The complainant had left with no other option but to seek the legal help. Therefore, she gathered courage and lodged the impugned FIR against all the accused persons.

3. Learned advocate Ms. Urvashi Mehta appearing for the applicant has submitted that the so called incident took place

on 01.09.2022 and the impugned FIR came to be lodged on 13.08.2023 and the applicant-accused was arrested on the very same day, i.e., on 13.08.2023 and since then he is in jail. It is further submitted that now the investigation has been completed and charge-sheet has also been filed. Learned advocate Ms. Mehta has further submitted that the applicant-accused is the mother-in-law of the complainant and it is alleged in the first information report that the present applicant-accused has aided, instigated and abetted the accused No.2, i.e, the husband of the complainant to commit such an offence and, therefore, she has been arraigned as an accused. The only role attributed to her is of abettor. Learned advocate Ms. Mehta has submitted that the present applicant-accused is a lady aged about 45 years and she is behind the bar since 13.08.2023. It is further submitted that so far as the offence under the provisions of Sections 354(A)(C), 498(A), 508, 509, 34, 114 and 201 of the IPC are concerned, the maximum punishment to be imposed is of three years and for the offences punishable under Sections 506(2) of IPC and Sections 66(e), 67(a) of the I.T. Act, the maximum punishment to be imposed is of seven years. Learned advocate Ms. Mehta has submitted that the applicant-accused is a lady and nowhere in the entire body of the complaint it is alleged that she has aided or abetted her husband to make physical relationship with the complainant. Even there are no allegations against the father-in-law of forcing or pressurizing the complainant to make physical relationship with him. The only allegations made against the father-in-law is that he was touching on her private parts under the pretext of applying ointment on her private part. It is further submitted that in

the entire body of the complaint, the only allegation made against the applicant is that when the complainant complained her about such illegal demands at the end of her father-in-law and husband, the applicant accused took side of her son and husband which do not attract the provisions of Sections 376 and 376(D) of the IPC. Even if it is presumed that the burden casts upon the prosecution to prove the foundational facts beyond all reasonable doubt the FIR did not contain the offence alleged against the petitioner for the offence punishable under Section 376 of the IPC. It is further submitted that there is no instance narrated in the complaint that would touch upon the offence punishable under Section 498A of IPC.

4. In such circumstances, referred to above, learned advocate Ms. Mehta prays that there being merit in this application, the same may be allowed and the applicant-accused may be released on bail on any suitable terms and conditions.

5. The learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. Learned APP has submitted that the role of the present applicant-accused is clearly spelt out from the compilation of the charge-sheet papers. Learned APP Mr. Mehta has further submitted that the present applicant-accused has actively participated in the commission of the crime since beginning and the said fact is clearly reflected from the statements of the witnesses. It is very categorically stated by the complainant that her husband and

father-in-law were acting and behaving in such an unusual manner that cannot be acceptable in the Society. It is very specifically alleged in the complaint that all the accused persons were forcing the complainant to record her own nude videos by wearing mask which would be uploaded on one particular porn website and by doing so, they will earn some volume of amount from the said website. It is further submitted that the father-in-law of the complainant was behaving in a very indecent manner with the complainant in the presence of the applicant as well as her son and as and when the complainant tried to raise her voice against such an act at the end of the father-in-law, she was overpowered by all the family members. Not only that, the applicant also administered threat to develop physical relationship with the father-in-law and, therefore, the active involvement of the present applicant-accuse is clearly found out from the materials available on record. Learned APP has submitted that considering the role attributed to the applicant-accused, this is a fit case wherein discretionary power of this Court is not required to be exercised in favour of the applicant-accused.

6. Learned advocate Mr. Rahul Dave has submitted that he has received instructions to appear on behalf of the complainant to oppose the present bail application. Learned advocate Mr. Dave has submitted that the applicant-accused has played an active role in the commission of such a heinous crime and, therefore, she does not deserve any discretionary relief from this Court. It is further submitted that the complainant did not leave her matrimonial house on her own but she had to left her marital house due to continuous and

constant torture and mental harassment meted out by all the accused persons. Learned advocate Mr. Dave has also submitted that the incident as alleged is of very serious nature. The complainant was threatened for dire consequences and, therefore, due to fear and shyness, she did not tell anything about such sexual assault upon her to anyone including her parents. Learned advocate Mr. Dave has submitted that the present applicant-accused was one of the members of the WhatsApp group in which such videos were shared. It is further submitted that during the course of investigation, mobile phones of all the accused persons were recovered by the police and they found that such videos were deleted and some of them were recovered by the police which has led to show the truthfulness of the allegations made by the complainant. The mobile phones are sent to FSL and after the receipt of the report from the FSL, the picture would be more clear. It is pertinent to note that when such videos were being shared in the WhatsApp group, the applicant did not even try to stop such an act though she was member of the said group which clearly shows her involvement in the crime. Learned advocate Mr. Dave has also submitted that being a lady, the applicant had not done anything to save the integrity of another lady and, therefore, she does not deserve any relief on the ground that she is a lady. Even in some of the photographs, the applicant-accused also found to be there along with his son touching the private parts of the complainant. Learned advocate Mr. Dave has submitted that as the father-in-law of the complainant is believing in superstitions, when the complainant was seven months pregnant, she was forcibly compelled to give a pre-mature

birth to a child by her in-laws which is evident from the statement of the doctor which is part and parcel of charge-sheet.

7. In such circumstances, referred to above, learned advocate Mr. Dave prays that the present application being devoid of any merit, the same be rejected and the applicant-accused may not be enlarged on bail.

8. I have given my anxious consideration to the submissions made by the learned advocates appearing for the respective parties and perused the material on record.

9. In the light of the submissions made by the respective learned advocates, the following points arise for my consideration:

(i) Whether cognizance being taken against the applicant-accuse for offence punishable under Section 376 of IPC is tenable in law?

(ii) Whether the allegations against the applicant-accused for other offences are tenable in law?

**Point No.(i):**

**Whether cognizance being taken against the applicant-accused for offence punishable under Section 376 of IPC is tenable in law?**

10. To consider this issue, it is germane to notice what drove the complainant to register the complaint and what drives the

applicant-accused to this Court. The entire issue springs from the complaint registered by the wife alleging commission of brutal sexual acts by the husband, father-in-law and mother-in-law against her. After registration of the complaint, investigation was conducted into the matter. After investigation, the Police have filed their final report/charge sheet.

11. The charge sheet filed by the Police after investigation also depicts graphic details of the demonish lust of the husband of the complainant and her father-in-law whether for money or for sexual satisfaction in which the applicant-accused has also very actively participated. Herein the case on hand, the allegations are very serious in nature. The husband himself has recorded their lovemaking moments in the camera of his mobile which were subsequently shared in one WahtsApp group of the family and also uploaded on one porn website, namely, charubate-free adult. It is not that the husband is doing such an illegal activity with any woman with whom he has an illicit relationship. The victim in the present case is his own wife whose videos were being uploaded on the porn website by her husband itself. The applicant-accused is the mother-in-law of the complainant who was also very well aware about the said fact. The allegations are also to the effect that the father-in-law got installed the C.C.T.V camera in the bedroom of the complainant and both the applicant-accused and the father-in-law were watching the lovemaking moments of her own son and daughter-in-law on the TV screen in their bedroom. Not only that, they were compelled



their son to take nude videos and photographs of the complainant and shared it on one family WhatsApp group in which the applicant-accused is also the member of the group. Therefore, it appears that the present applicant-accused was very well aware about such an illegal and shameful act. It is alleged by the complainant that initially when she complained about the sexual assault meted out by her husband and father-in-law to the applicant-accused, she took side of her son and husband and told the complainant to keep quiet. During the course of investigation, the Investigating Officer has retrieved some photographs in which the applicant-accused is clearly shown with her son touching the private part of the complainant. Therefore, it cannot be said that the applicant-accused was not aware about the sexual assault and harassment meted out to the complainant. It is alleged by the complainant that in order to earn money from a particular porn website, they had committed such a heinous act with her as they were in desperate need of money to save their hotel from being sold out by the other partners. Whatever might be the reason behind doing such a heinous and shameful act, the same must be strictly criticized and the accused must be punished in order to prevent commission of such type of offences in future. The applicant-accused being a lady had not done anything to save the integrity of another lady when the complainant told her about each and everything happened with her. She had to prevent her husband and son from doing such an act and by not doing so, she has played an equal role that of the other two accused, i.e, the husband of the complainant and the father-in-law.

12. Post Republic, India is governed by the Constitution. The Constitution treats woman equal to man and considers marriage as an association of equals. The Constitution does not in any sense depict the woman to be subordinate to a man. The Constitution guarantees fundamental rights under Articles 14, 15, 19 and 21 which are right to live with dignity, personal liberty, bodily integrity, sexual autonomy, right to reproductive choices, right to privacy, right to freedom of speech and expression. Under the Constitution, the rights are equal; protection is also equal.

13. Marital rape is illegal in 50 American States, 3 Australian States, New Zealand, Canada, Israel, France, Sweden, Denmark, Norway, Soviet Union, Poland and Czechoslovakia and several others. In the United Kingdom, which the present Code largely draws from, has also removed the exception pursuant to a judgment rendered by the House of Lords in R v. R in the year 1991. Therefore, the Code that was made by the rulers then, has itself abolished the exception given to husbands. Therefore, a man sexually assaulting or raping a woman is amenable to punishment under Section 376 of IPC. In most of the cases of such a nature, the usual practice is that if the man is the husband, performing the very same acts as that of another man, he is exempted. In my considered view, the same cannot be countenanced. A man is a man; an act is an act; rape is a rape, be it performed by a man the "husband" on the woman "wife".

14. Gender violence is most often unseen and is shrouded in

a culture of silence. The causes and factors of violence against women include entrenched unequal power equations between men and women that foster violence and its acceptability, aggravated by cultural and social norms, economic dependence, poverty and alcohol consumption, etc. In India, the culprits are often known to the woman; the social and economic "costs" of reporting such crimes are high. General economic dependence on family and fear of social ostracization act as significant disincentives for women to report any kind of sexual violence, abuse or abhorrent behaviour. Therefore, the actual incidence of violence against women in India is probably much higher than the data suggests, and women may continue to face hostility and have to remain in environments where they are subject to violence. This silence needs to be broken. In doing so, men, perhaps more than women have a duty and role to play in averting and combating violence against women.

15. Sexual violence is varied in degree. At the highest (or, rather most aggravated) level, is rape with or without attendant violence. However, there are a substantial number of incidents which fall within the rubric of sexual violence, that amount to offences under various penal enactments. These outlaw behaviours such as stalking, eve-teasing, shades of verbal and physical assault, and harassment. Social attitudes typically characterize this latter category of crimes as "minor" offences. Such "minor" crimes are, regrettably not only trivialised or normalized, rather they are even romanticized and therefore, invigorated in popular lore such as cinema. These attitudes which indulgently view the crime through

prisms such as “boys will be boys” and condone them, nevertheless have a lasting and pernicious effect on the survivors.

16. The United Nations Organisation has defined “violence against women” as “any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.” The effect of offensive behaviour against women, which laws criminalize physical, verbal, or other acts which threaten or give them acute discomfort, undermining their dignity, self-worth and respect, is to silence or subdue the survivor.

17. In *The Standard of Social Justice as a Research Process*, two scholars of psychology made a strong indictment of the (contextually, Canadian) criminal justice process:

“The more general indictment of the current criminal justice process is that the law and legal doctrines concerning sexual assault have acted as the principle [sic] systemic mechanisms for invalidating the experiences of women and children. Given this state of affairs, the traditional view of the legal system as neutral, objective and genderblind is not defensible. Since the system is ineffective in protecting the rights of women and children, it is necessary to re-examine the existing doctrines which reflect the cultural and social limitations that have preserved dominant male interests at the expense of women and children.”

**Point No.(ii):**

**Whether the allegation against the applicant for**

**other offences is tenable in law?**

18. This now takes me to the next point with regard to the alleged offences against the applicant which are offences punishable under Sections 498A, 354 and 506 of the IPC. The complaint clearly brings out the offence punishable under Section 498A of the IPC. Section 354 of the IPC which deals with assault or criminal force on a woman with intent to outrage her modesty is clearly met in the complaint. Section 506 of the IPC deals with criminal intimidation which is also met in the complaint. Therefore, the offences punishable under Sections 498A, 376, 354 and 506 of the IPC are all clearly spelt out in the complaint, in the statements recorded during the investigation and the contents of the summary in the charge sheet. None of the grounds urged by the learned advocate with regard to the offences alleged against the wife merit acceptance. There are various disputed questions of fact that have to be thrashed out only in a full-fledged trial. If the applicant has anything in her defense on the allegations, it is for her to put up such defense before the Sessions Court and come out clean in the trial. Therefore, at this juncture, this Court deems it fit not to interfere with the judgment passed by the the trial court, particularly, in the light of the aforesaid allegations.

19. For the foregoing reasons, this application fails and is hereby rejected.

**(DIVYESH A. JOSHI,J)**

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