IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 14175 of 2020

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RAKESH MAKHABHAI BAMANIYA
Versus
STATE OF GUJARAT

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Appearance:
MR BM MANGUKIYA(437) for the Applicant(s) No. 1
MR HK PATEL, ADDL. PUBLIC PROSECUTOR(2) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE A.C. RAO**

Date : 20/10/2020

ORAL ORDER

[1] The present application is filed under Section 439 of the Code of Criminal Procedure by the applicant for regular bail in connection with an FIR being C.R.No.11821048200036 dated 12.02.2020 registered with Sukhsar Police Station, District: Dahod for the offences under Sections 302, 201 and 114 of the Indian Penal Code.

[2] It is contended by the learned advocate for the petitioner that the victim was drunk and fell down in the well, but the complainant had got-up the story of throttle and thrown. It is vehemently contended that there is no mark of resistence found on the body of the victim, only one nail injury is found on the neck of the victim. It is vehemently contended that if a person is throttled before throwing in the well, then

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his lungs must not have any water, so it is only plaussible explanation to the fact that he was not killed as relied by the prosecution and therefore, the present applicant may be released on bail.

[3] While opposing this application, the learned APP has contended that this is a successive bail application and previous bail application was withdrawn. In the present application, the applicant has not stated anything about the previous withdrawal, so the successive bail application is not maintainable, except there is change in circumstances. It is vehemently contended that there is no change in circumstance. Under the circumstnaces, this Court may not enter into the merits of the case.

[4] Heard learned advcoates for the respective parties through video conference.

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[5] At this stage, it would be appropriate to refer to the judgment of the Apex Court rendered in case of **Kalyan Chandra Sarkar vs. Rajesh Ranjan reported in AIR 2005 SC 921**, wherein it is held that "this Court also observed that though the accused has a right to make successive application for grant of bail, the Court entertaining such subsequent bail applications has duty to consider the reaosns and grounds on which the earlier bail applications were rejected and in such cases, the Court also has a duty to record what

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are the fresh grounds which persuaded it to take a view different from the one taken in the earlier application."

[6] In the case on hand, the previous bail application was withdrawn after filing of charge-sheet and this bail application is also filed after filing of charge-sheet. The learned advocate for the peittioner has not been able to piont out any change in the circumsntaces.

[7] Under the circumstances, in absence of any change in circumstances, no ground is mae out by the petitioner as observed by the Apex Court. Under the circumstnaces, the present application is required to be dismissed and is hereby, dismissed in absence of any change in circumstnaces. Rule is discharged.

(A. C. RAO, J)

SRILATHA//DOLLY//BEENA

सत्यमेव जयते
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