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Exhibit	:	/B

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
GANDHIDHAM-KACHCHH**

Criminal Miscellaneous Application No.527/2022

Applicant : **Rakesh Sureshbhai Parmar,**
Age : 21 years, Occupation : Labour,
Residing at Kudus,Taluka-Wada,,
Dist-Palghar,Maharashtra.,
At present Batwa,Taluka-Manavadar,
Junagadh.

Versus

Opponent : **The State of Gujarat**

Appearances:

Mr. H. P. Gadhvi, the Ld. Advocate for the applicant-accused.

Mr. S. G. Rana, the Ld.APP for the opponent-State.

Mr. R. T. Lalchandani, the Ld. Adv. for the complainant.

J U D G E M E N T

1. The present bail application is preferred by the applicant-accused for grant of bail u/s.439 of Cr.P.C. Accused came to be arrested for the alleged offence u/s. 363,366 of I.P.C. and u/s. 18 of Protection Of Children From Sexual Offences Act, 2012,for which F.I.R. bearing C.R. No.11993006220917/2022 came to be registered with Gandhidham A Division Police Station. Thereafter, the accused came to be arrested and he is in judicial custody since 06/08/2022. That earlier, the applicant/accused has filed bail application bearing CRMA No. 470/2022, which came to be rejected vide order dtd.21/09/2022. That now the charge-sheet is filed, which came to be registered as Sp. (POCSO) Case No. 23/2022. Therefore, present application has been filed to seeks relief of enlargement on bail under Section 439 of the

Criminal Procedure Code,1973.

2. The short fact of the the complaint is such that complainant, who came to be Mother of victim filed complaint on 04.08.2022 alleging that the applicant/accused took away her minor daughter by alluring and under the promise to marry, therefore, complaint was registered under of Ss. 363 of I.P.C. Thereafter her daughter has been traced out by them and they came to know from her that, the accused has taken her with him.
3. Learned Advocate for applicant-accused has raised contention in line with the present application. This is the first bail application after the charge-sheet. He has submitted that the applicant is falsely implicated in the offence, he is innocent and is not indulged in the so called offence. It is submitted that the complaint was lodged on 04/08/2022 and no reason has been assigned for delay in filing complaint. It is submitted that the complaint is got-up one only with intent to book the present applicant in the present offence, therefore no case u/s. 363,366 of I.P.C. and u/s. 18 of Protection Of Children From Sexual Offences Act, 2012,is made out. Looking to whole accusations not even single accusation is applicable against the applicant. The story is not believable as it is impossible to kidnap a girl of 16 years and 4 months with single hand, except the fact she willingly left the house without information of accused-applicant. The applicant has not committed any such offence and he has been falsely implicated in this offence. In fact victim herself left the home and willing to live with him. The age of victim was 16 years and 04 months when they eloped to live the life together, therefore there is no case of false promise of marriage. Its a case of teenage affair and they were in love with each other, so she eloped and thereafter accused father send her back. The accused has neither acted in unfair manner not taken disadvantage of victims loneliness. The accused has not

used any force on victim. The accused is also a young man. Therefore applicant deserves to be enlarged on bail. The applicant, if released on bail, is not likely to abscond. It is further submitted that the applicant shall comply all the conditions that may be imposed. Hence, urged to release the applicant on regular bail. In support of contentions learned advocate has place reliance upon the unreported judgment of Hon'ble Bombay High Court in case of **Sunil Mahadev Patil v/s The State Of Maharashtra** being Bail Application No. 1036/2015 decided on 03/08/2015.

4. The Ld. APP for the State, has pointed out that the age of the Victim, at the time of incident was less than 18 years and, therefore, serious offence has been committed by the present accused. Earlier, the applicant/accused came to be released on bail in CRMA No. 116/2022 but the applicant/accused has flouted the bail condition and again committed the offence with the same victim. Hence, under the circumstances, the application be rejected.
5. Investigating Officer has filed his Affidavit vide Exh: 7 wherein it is submitted that there is direct and sufficient evidence against accused and if released on bail, he would threat to witnesses. Therefore, requested to reject the present bail application. The applicant/accused has past antecedent. The original complainant has appeared and objected the application. The Ld. Adv. Mr. R. T. Lalchandani for the complainant and objected the present bail application.
6. Bail to be granted or not to be granted requires to be decided on celebrated principles enunciated by the Hon'ble Apex Court and the Hon'ble Gujarat High Court. This Court, at this stage should not go on scrutinizing the evidences before it. The Hon'ble Apex Court has held that the Court must bear in mind the While deciding the bail

application, the merits and demerits of the case should not be discussed in detail, but some important factors are required to be taken into consideration i.e. prima-facie case against the accused, nature and gravity of offence, punishment prescribed for the offence, danger of the accused absconding or fleeing away, if released on bail, character, behavior, means, criminal antecedent, position and standing of the accused, likelihood of the offence being repeated, reasonable apprehension of the witnesses being tampered with, larger interest of the society and State, etc.

7. Considering the above factors in the present case and after perusing the police papers, it seems that the applicant has alleged to have been involved in offence. The FIR has been filed for alleged offences under Sections 363,366 of Indian Penal Code and u/s. 18 of Protection Of Children From Sexual Offences Act, 2012. Earlier, this Court has released the applicant/accused on bail in CRMA No. 116/2022 on 24/03/2022 wherein a specific condition has been imposed that he shall not contact or even attempt to contact the victim by mean of electronic device but the applicant/accused has flouted the bail condition of earlier bail order and committed the present offence. There is a prima facie case against the applicant/accused. The applicant/accused has past antecedent of similar nature. That from the police papers including the, it appears that the applicant/accused by inducement taken the victim with him though he is aware that a trial is awaiting to be concluded and at the earliest time after release on bail committed the offence of present nature. Therefore, it can be used that he has misused the liberty given by the Court. There is prima-facie involvement of the applicant/accused in the present offence. I Would like to make it clear that at this stage, the Court has not scrutinize the evidence in detail. Therefore, serious offence has been committed by the present accused. The age of victim can be said to be tender age.

Therefore, considering all the circumstances, In my opinion, looking to the fact that there is prima facie material which establishes the involvement of the applicant herein, and looking to their conduct, age of victim, there are no grounds which would entitle the applicant to the reliefs that they seeks. The age of victim and looking to the act and conduct it dis-entitled him for bail. Therefore, this Court does not incline to exercise discretion in favour of the applicant. Hence, I pass the following order :

ORDER

- (1) This application is hereby rejected.

Pronounced in the open Court today on this **12th** Day of **October, 2022.**

DATE : 12/10/2022
Gandhidham.

(M. J. PARASHAR)
ADDITIONAL SESSIONS JUDGE,
Gandhidham -Kachchh.
UI Code No.GJ00463.