

(2023) 05 GUJ CK 0074

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 7827 Of 2023

Ankitbhai Madhavbhai Parmar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 16-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 363, 366, 376(2)(n)

Protection Of Children From Sexual Offences Act, 2012 — Section 4, 5(I), 6, 8

Citation : (2023) 05 GUJ CK 0074

Hon'ble Judges : M. R. Mengdey, J

Bench : Single Bench

Advocate : Pratik B Barot, H.K.Patel

Judgement

M. R. Mengdey, J

1. The Applicant – Ankitbhai Madhavbhai Parmar has filed this Application under Section 439 of the Code of Criminal Procedure for enlarging the Applicant on Regular Bail in connection with FIR being C.R. No. 11196004230054/23 registered with Gotri Police Station, Vadodara for the offences punishable under Sections 363, 366, 376(2)(n) of the Indian Penal Code and Sections 4, 5(I), 6, 8 of the The Protection of Children from Sexual Offences Act, 2012.

2. Heard learned Advocate Mr. Pratik Barot for the Applicant and learned APP for the Respondent – State.

Submission of the Parties:

3. Learned Advocate for the Applicant / Accused has submitted that the Applicant and the Prosecutrix were in relation for quite some time prior to the registration of the FIR. The prosecutrix had gone with the present Applicant on her own volition and the physical relations were established between them withn the consent of the prosecutrix herself.

3.1 Learned Advocate for the Applicant has further submitted that in the present case the investigation is over and the chargesheet is also filed.

3.2 Learned Advocate for the Applicant has further submitted that the Applicant has good reputation in the society and no useful purpose would be served by keeping the applicant in jail for indefinite period. It is further contended that the applicant is ready and willing to abide by all the conditions that may be imposed by this Court if released on bail.

4. Per contra, learned APP has vehemently opposed the present application for grant of regular bail inter alia contending that the age of the prosecutrix is below 18 years and thus the prima facie case is made out against the present Applicant. Looking to the nature and gravity of offence, it is requested that, this Court may not exercise the discretion in favour of the applicant. Learned APP further submitted that if the Hon'ble Court is inclined to grant bail then in such case strict conditions may be imposed to secure the presence of the Applicant Accused.

Merits of the Case:

5. This court has considered the following aspects:

(a) As such the investigation is over and the chargesheet is also filed.

(b) As per catena of decisions of Hon'ble Supreme Court, there are mainly 3 factors which are required to be considered by this court i.e. prima facie case, availability of Applicant accused at the time of trial and tampering and hampering with the witnesses by the accused.

(c) That the learned Advocate for the Applicant has submitted that the Applicant Accused is not likely to flee away.

(d) That the Applicant is in custody since 25.1.2023.

(e) The law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. C.B.I. Reported in (2012) 1 SCC 40.

6. At the outset it is required to be noted that in the present case the investigation is over and the chargesheet is also filed. The Applicant and the prosecutrix were in relation for quite some time prior to the registration of the FIR and the incident. The record also indicates that since the prosecutrix was questioned about her relation with the present Applicant and she on her own volition left her house and stayed with the present Applicant at different places and with the consent of the prosecutrix physical relations is established between them.

7. Having heard the learned Advocates for the parties and perusing the record produced in this case as well as taking into consideration the facts of the case, nature of allegations, gravity of accusation, availability of the Applicant Accused at the time of Trial etc. and the role attributed to the present Applicant accused,

the present Application deserves to be allowed and accordingly stands allowed. This Court has also gone through the FIR and police papers and also the earlier order passed by the learned Sessions Court where the learned Sessions Judge has disallowed the bail Application at initial stage. The Applicant Accused is ordered to be released on bail in connection with the aforesaid FIR on executing a personal bond of Rs.10,000/- with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that he shall:

(a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer or tamper with the evidence.

(b) maintain law and order and not to indulge in any criminal activities.

(c) furnish the documentary proof of complete, correct and present address of residence to the Investigating Officer and to the Trial Court at the time of executing the bond and shall not change the residence without prior permission of the trial Court.

(d) provide contact numbers as well as the contact numbers of the sureties before the Trial Court. In case of change in such numbers inform in writing immediately to the trial Court.

(e) file an affidavit stating his immovable properties whether self acquired or ancestral with description, location and present value of such properties before the Trial Court, if any.

(f) not leave India without prior permission of the Trial Court

(g) surrender passport, if any, to the Trial Court within a week. If the Applicant does not possess passport, shall file an Affidavit to that effect.

8. Bail bond to be executed before the Trial Court having jurisdiction to try the case. It would be open for the Trial Court concerned to give time to furnish the solvency certificate if prayed for.

9. If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities will release the Applicant forthwith only if the Applicant is not required in connection with any other offence for the time being.

10. At the trial, the concerned trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

11. Rule is made absolute. Direct service permitted.