

(2023) 06 GUJ CK 0114

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 2856 Of 2023

Chetan @ Chintu Ashwinkumar Ashokbhai Solanki

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 27-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 363, 366, 376(2)(N), 376(3)
Protection Of Children From Sexual Offences Act, 2012 — Section 4, 6

Citation : (2023) 06 GUJ CK 0114

Hon'ble Judges : Nirzar S. Desai, J

Bench : Single Bench

Advocate : Alpesh N Gadhavi, Ronak Raval

Final Decision : Allowed

Judgement

Nirzar S. Desai, J

1. Heard learned advocate Mr.Alpesh Gadhvi for the applicant and learned Additional Public Prosecutor Mr.Ronak Raval for the respondent – State.

2. By this application filed under Section 439 of the Code of Criminal Procedure, 1973, the applicant is seeking release on regular bail in connection with the FIR being C.R.No.11216024220824 of 2022 registered with Kalol City Police Station, Gandhinagar for offences punishable under Sections 376(2)(N), 376(3), 363, 366 of Indian Penal Code and under Sections 4 and 6 of POCSO Act.

3. Learned advocate for the applicant submitted that, the applicant is not involved in commission of offence as alleged in the FIR and therefore, looking to the role of the applicant and nature of the allegations, the applicant is required to be enlarged on regular bail by imposing suitable terms and conditions.

4. On the other hand, learned APP appearing for the respondent – State vehemently submits that, the offences which have been charged are serious in nature affecting the society at large and looking to the facts as well as the

allegations made against the applicant, no discretion would be required to be exercised.

5. In the facts and circumstances of the case and considering the nature of allegations, this Court is of the opinion that, discretion is required to be exercised to enlarge the applicant on regular bail. This Court has considered the following facts while exercising discretion in favour of the applicant :-

- (i) the applicant is in jail since 29.11.2022;
- (ii) the investigation is over and the charge-sheet is filed;
- (iii) this Court is conscious about the fact that age of the victim was 12 years and 03 months only when the offence took place, however, at the same time the age of the present applicant is also only 18 years;
- (iv) both the applicant and the victim are teenagers and as per statement of victim, prima facie, it appears that this is a case of love affair and out of their love affair offence in question has taken place and, therefore, though the age of the victim is 12 years and 03 months, considering the age of the applicant who is aged about 18 years only, I am of the view that keeping the applicant behind the bar till the trial is over would not yield any result and on the contrary the present applicant as well as victim are required to be counseled properly and, therefore, I consider the case of the present to be enlarged on regular bail;
- (v) there is no past antecedent attributed to the present applicant.

6. In view of the aforesaid facts, without discussing the evidence in detail, this Court, prima facie, is of the opinion that, this is a fit case to exercise the discretion and enlarge the applicant on regular bail. Hence, present application is allowed and the applicant is ordered to be released on regular bail in connection with the FIR being C.R.No.11216024220824 of 2022 registered with Kalol City Police Station, Gandhinagar on executing personal bond of Rs.10,000/- (Rupees Ten thousand only) with one surety of the like amount to the satisfaction of the learned 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 injurious to the interest of the prosecution;
- [c] surrender passport, if any, to the lower court within a week;
- [d] not leave India without prior permission of the Sessions Judge concerned;
- [e] furnish latest 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 the trial Court;
- [f] mark his presence before the concerned police station in the first week of every month till the trial is over;

7. The Authorities will release the applicant only if the applicant 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. Bail bond to be executed before the learned 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. At the trial, learned 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.

8. Rule is made absolute to the aforesaid extent. Direct service is permitted.