

(2021) 02 GUJ CK 0041
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 1297 Of 2021

Dharmesh @ Dharmo Babubhai @ Balabhai Aambaliya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 363, 366, 376

Protection Of Children From Sexual Offences Act, 2012 — Section 4, 12

Citation : (2021) 02 GUJ CK 0041

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : BH Solanki, LBA Dabhi

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. RULE. Learned APP waives service of rule for the respondent State.
2. This application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 for regular bail in connection with FIR registered as CRÂI/11208052201942 /2020 with Bhaktinagar Police Station, Rajkot for the offence punishable under Sections 363, 366 and 376 of the Indian Penal Code and Sections 4 and 12 of the POCSO Act.
3. Learned advocate appearing on behalf of the applicant submits that considering the nature of offence, the applicant may be enlarged on regular bail by imposing suitable conditions.
4. On the other hand, the learned Additional Public Prosecutor appearing for the respondent State has opposed grant of regular bail looking to the nature and gravity of the offence.

5. Learned Advocates appearing on behalf of the respective parties do not press for a further reasoned order.

6. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers. Following aspects are considered :Â?

I) The FIR is registered on 07.12.2020 for the offence which took place on 07.12.2020.

II) The applicant is in custody since 10.12.2020.

III) Investigation is concluded, as the remand period is over.

IV) The applicant is aged 22 years, unmarried and was having affair with the prosecutrix, who is aged 16 years and 7 months.

V) Considering the contents of the report dated 10.12.2020 based on the statement of the prosecutrix, the element of love affair cannot be ruled out.

VI) Learned Additional Public Prosecutor under the instructions of the Investigating Officer is unable to bring on record any special circumstances against the applicant.

7. This Court has taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. Central Bureau of

Investigation reported in [2012] 1 SCC 40.

8. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the First Information Report,

without discussing the evidence in detail, prima facie, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the

applicant on regular bail.

9. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with CRÂI/11208052201942 /2020

with Bhaktinagar Police Station, Rajkot on executing a personal bond of Rs.10,000/= (Rupees Ten Thousand Only) with one surety of the like amount

to the satisfaction of the 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 the State of Gujarat without prior permission of the Sessions Judge concerned;

(e) mark presence before the concerned Police Station on alternate Monday of

every English calendar month for a period of six months between

11.00 a.m. and 2.00 p.m.;

(f) furnish the present address of his 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 this Court;

(g) Not to enter Rajkot City till the evidence of prosecutrix is recorded except for the purpose of marking presence before the concerned Police

Station and attending the trial proceedings.

10. The authorities will release the applicant only if he 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.

11. Bail bond to be executed before the 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.

12. At the trial, the 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

13. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent. Direct Service is permitted.