

**(2024) 03 GUJ CK 0089**

**In the Gujarat High Court**

**Case No :** R/Criminal Misc.Application (For Regular Bail - After Chargesheet) No. 5595 Of 2024

Dharmesh @ Dharmo Nathubhai Bhabhor

APPELLANT

Vs

State Of Gujarat

RESPONDENT

**Date of Decision :** 22-03-2024

**Acts Referred:**

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

**Citation :** (2024) 03 GUJ CK 0089

**Hon'ble Judges :** Divyesh A. Joshi, J

**Bench :** Single Bench

**Advocate :** Dhruvin P Bhuptani, L.B. Dabhi

**Final Decision :** Allowed

## Judgement

Divyesh A. Joshi, J

1. Rule. Learned APP waives service of notice of Rule on behalf of respondent-State.
2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with C.R. No. 11208037230163 of 2023 registered with the Kuvada Police Station, District Rajkot for the offence punishable under Sections 363, 366, 376(2)(J)(N) of the Indian Penal Code and Section 6 of the POCSO Act.
3. Learned advocate Mr. Bhuptani appearing on behalf of the applicant has submitted that the so called incident has occurred for the period between 27.02.2023 to 28.02.2023 and FIR was registered on 13.03.2023 and in connection with the same, the applicant was arrested on 19.04.2023 and since then, he is in judicial custody. It is also submitted that the investigation is already completed and the present application is filed after submission of the

charge-sheet. Learned advocate further submits that during the course of investigation, statement of the victim girl has been recorded by the concerned IO and if Hon'ble Court may make cursorily glance upon the contents of the statement of the victim, it would be found out that due to physical attractions, they have developed relationship and there was consensual act. It is also found out from the said statement that the victim made phone calls to the present applicant and they had eloped together with her free will and violation. Learned advocate submitted that considering the above stated factual aspect as well as role attributed to the present applicant, the applicant may be enlarged on regular bail by imposing suitable terms and conditions.

4. Learned APP appearing on behalf of the respondent-State has opposed the present bail application. It is submitted that the role of the present applicant is clearly spelt out from the body of the compilation of the charge sheet papers. He further submitted that considering the role attributed by the present applicant, the present application may not be considered.

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

6. I have perused the police papers as well as documents produced by the applicant along with the memo of the application. It is found out from the record that the applicant is jail since 19.04.2023. The investigation is already completed and the present application is filed after submission of the charge-sheet. I have considered the role attributed to the present applicant as well as the statement of the victim recorded by the IO and found out that there was consensual act between the applicant and the victim. Considering the above stated factual aspect and considering the role attributed by the present applicant at the time of commission offence, I am inclined to exercise the discretion in favour of the applicant.

7. This Court has also 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 as well as in case of Satender Kumar Antil v. Central Bureau of Investigation & Anr. reported in (2022)10 SCC 51.

8. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the FIR, 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 and the applicant is ordered to be released on regular bail in connection with C.R. No. 11208037230163 of 2023 registered with the Kuvada Police Station, District Rajkot, on executing a personal bond of Rs. 15,000/- (Rupees Fifteen 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. to 2:00 p.m.;
- [f] furnish the present 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 this Court;

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. 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.

11. 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.

12. The present application stands allowed accordingly. Rule made absolute to the aforesaid extent.

Direct service is permitted.