

(2022) 06 GUJ CK 0097
In the Gujarat High Court

Case No : R/Criminal Revision Application No. 536 Of 2022

Dhruilkumar Hasmukhbhai Bamaniya Through
Hasmukhbhai Malabhai Bamaniya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 15-06-2022

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 201, 302

Citation : (2022) 06 GUJ CK 0097

Hon'ble Judges : Samir J. Dave, J

Bench : Single Bench

Advocate : Nitin T Gandhi, R. C. Kodekar

Final Decision : Allowed

Judgement

Samir J. Dave, J

1. By filing present application, applicant, being a child in conflict with law, through his father has requested to release him on regular bail from the Juvenile Home in connection with the FIR registered as CR No.11821002210377 of 2021 with Sanjeli Police Station, District:Dahod by quashing and setting aside the judgment and order dated 27.04.2022 passed in Criminal Appeal No.16 of 2022 by the learned Additional Sessions Judge, Children Court, Dahod.

2. Heard learned advocate for the applicant and learned APP for the respondent-State.

3. It was submitted by leaned advocate for the applicant that the impugned judgment is unjust, unreasonable, against provisions of law and contrary to the evidence on record. Learned Judge ought to have appreciated the fact that the applicant is an innocent person and has not committed any offence as alleged in the FIR. There is no prima fave evidence which can connect the applicant with the crime in question. That, the applicant is falsely involved in the crime in question with an oblique motive and extraneous considerations. Ultimately, it was

requested by learned advocate for the applicant to allow present application by enlarging the applicant on regular bail.

4. Learned APP for the respondent-State has strongly objected the submissions of the learned advocate for the applicant and submitted that the applicant is involved in the serious offence and therefore, lower court has rightly rejected the request of releasing the applicant on bail. That, the prosecution has reasonably established the involvement of the present applicant. That prima facie evidence is there to connect the applicant with the crime in question. Ultimately, it was requested by learned APP for the respondent-State to dismiss present application.

5. Having heard learned advocate for applicant and learned APP for the respondent-State and perusing the investigation papers produced on record, it appears that in connection with the offence being CR No.11821002210377 of 2021 registered with Sanjeli Police Station, District: Dahod for the offence punishable under Sections 302, 201, 120B of the Indian Penal Code. The present applicant was arrested and he is in child remand home since 26.11.2021. Thereafter, investigation was carried out and charge sheet came to be filed against the applicant. It appears that TI Parade was not carried out nor no any eye witness is there pursuant to this incident.

6. This Court would like to refer Section 12(1) of the Act, which is as under:

"12. Bail to a person who is apparently a child alleged to be in conflict with law:

(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the persons release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.”

7. It appears that while rejecting the bail application of the applicant, the Juvenile Justice Board as well as Appellate Court have misinterpreted the above provisions and have failed to consider the true intent and object behind its enactment. There is no cogent material and reasonable grounds reflected in the order rejecting bail application on the basis of which it could be said that release of applicant is likely to bring applicant into association with any known criminal or expose the applicant to moral, physical or psychological danger or the applicant's release would defeat the ends of justice. In the result, present Criminal Revision Application is allowed and the impugned judgment and order dated 27.04.2022 passed in Criminal Appeal No.16 of 2022 by the learned Additional Sessions Judge, Children Court, Dahod stands quashed and set aside.

8. The applicant is ordered to be enlarged on regular bail in connection with CR No.11821002210377 of 2021 with Sanjeli Police Station, District: Dahod subject to the conditions that applicant 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 concerned Trial Court;

[e] furnish the present address of residence to the Investigating Officer and shall not change the residence without prior permission of this Court;

9. 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 concerned court will be free to issue warrant or take appropriate action in the matter. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

10. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order. Rule is made absolute to the aforesaid extent.

11. Registry is directed to communicate this order to the concerned authority as well as concerned courts through FAX/ Email.