

(2017) 03 GUJ CK 0121
In the Gujarat High Court
Case No : 7927 of 2017

DILIPBHAI SURJIBHAI KHANT

APPELLANT

Vs

STATE OF GUJARAT

RESPONDENT

Date of Decision : 31-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 439](#) - Special powers of High Court or Court of Session regarding bail
[Indian Penal Code, 1860](#), [Section 114](#),
[Section 376](#), [Section 363](#), [Section 366](#) - Abettor present when offence is committed -
Punishment for rape - Punishment for kidnapping - Kidnapping, abducting or inducing
woman to compel her marriage, etc
[Protection Of Children From Sexual Offences Act, 2012](#), [Section 6](#), [Section 12](#)

Citation : (2017) 03 GUJ CK 0121

Hon'ble Judges : S.H.VORA

Bench : Single Bench

Advocate : KRUNAL L SHAHI, ?RAJDEEP A CHAUDHARI, ?VISHAL K
ANANDJIWALA, ?MOXA THAKKAR

Judgement

1. When the matter is called out, learned advocate for the applicant is absent.
2. This application is filed under Section 439 of the Code of Criminal Procedure for regular bail in connection with F.I.R. registered at C.R. No. I - 91/2016 with Modasa Town Police Station for the offences punishable under Sections 363, 366 and 376, 114 of the IPC and u/s 6 and 12 of the POCSO Act.
3. From the averments made in the application, it appears that the applicant and the prosecutrix were in love with each other and the prosecutrix accompanied the applicant of her own and thereby, abandoned the guardianship of her parents voluntarily.

4. The investigating officer Mr. Gunvantsinh, ASI, Modasa Town Police Station is present.

5. Perused the records in great detail.

6. This is an usual case of boy and girl having affair and then, they eloped. As the prosecutrix was minor, the applicant is sent behind prison because of the complaint lodged by the father of the prosecutrix. Undoubtedly, a minor girl is to be protected under law as there are number of instances of sexual abuses of minor girls and therefore, there is a special legislation of POCSO in the year 2012 and amendment in sections 375 and 376 of the IPC in 2014. The judiciary takes a very serious note of sexual offences against women and specially against minor girls. Upon reading of the statement of the prosecutrix, they both eloped. Further, the trial Court rejected bail application mainly on the ground that the girl is minor and her consent is immaterial.

7. In the present case, the prosecutrix is 17 years 04 months old and the accused is 22 years old. It appears from the record and the statement of the prosecutrix that the prosecutrix was in love with the applicant and left the home of her own and moved with the applicant at various places. These are the mitigating factors and therefore, present application deserves consideration.

8. Hence, the application is allowed and the applicant is ordered to be released on bail in connection with C.R. No. I - 91/2016 with Modasa Town Police Station, on executing a 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 the 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] not leave the territory of India without prior permission of the Sessions Judge concerned;

[d] appear before the Investigation Officer concerned, as and when required for investigation purpose and attend the Court concerned regularly.

[e] furnish the present address of residence along with the proof to the I.O. concerned and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of Sessions Court concerned;

9. The competent authority 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 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. 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.

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