

(2021) 02 GUJ CK 0034

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 1469 Of 2021

Gumanbhai Dwarkabhai Dubhil

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 02-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 114, 363, 366, 376

Citation : (2021) 02 GUJ CK 0034

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : Apurva R Kapadia, Sukruti D Kapadia, Moxa Thakkar

Final Decision : Allowed

Judgement

Dr. A. P. Thaker, J

1. Heard learned advocates appearing on both sides through video conferencing.

[2] The present application is filed under Section 439 of the Code of Criminal Procedure by the applicant for regular bail in connection with an FIR

No.11184007200244 of 2020 registered with Naswadi Police Station, District:Chhota Udepur for the offences under Sections 363, 366, 376 and 114 of the Indian Penal Code.

[3] Mr.Apurva Kapadiya, learned advocate for the applicant submits that in view of earlier order passed by this Court in Criminal Misc. Application

No.11525 of 2020, since four months are completed and since evidence of the victim has not started, the applicant had approached the trial Court for

bail. However, such application is rejected by the trial Court only on the ground that it was filed prematurely. He further submitted that settlement is

arrived at between the parties and, therefore, the applicant may be enlarged on regular bail by imposing suitable conditions. He assured the Court that the applicant will abide by all such conditions.

[4] Per contra, Ms.Thakkar, learned Additional Public Prosecutor appearing on behalf of the respondent-State has opposed grant of regular bail

looking to the nature and gravity of the offence. She submitted that the victim is below 16 years of age and, therefore, discretion may not be exercised in favour of the applicant.

[5] Ms.Sukruti Kapadiya, learned advocate for the private respondent submitted that the matter is settled between the parties.

[6] On 20.8.2020, this Court has passed following order in Criminal Misc. Application No.11525 of 2020.

â?? Heard Mr.Sindhi, learned advocate for the applicant and Ms.Mehta, learned APP for the respondentState through video conferencing.

After making some submissions, learned advocate for the applicant does not press this application at this stage and, under instructions, seek permission to withdraw the present application with a liberty to file afresh in future, if occasion arises.

Permission, as prayed for, is granted. The applicant is at liberty to file such application after recording of evidence of the victim, however, if the evidence is not recorded within four months, the applicant can file such application before appropriate Court after four months. The application stands disposed of as withdrawn. It is clarified that this Court has not expressed any opinion on the merits of the case.â??

[7] It is clear that evidence of the victim is not yet recorded. This Court has heard learned advocates appearing on behalf of R/CR.MA/1469/2021

ORDER the respective parties. Learned advocates appearing on behalf of the respective parties do not invite reasoned order. This Court has

considered following aspects:-

(i) Applicant is aged 20 years.

(ii) He is in jail since 10.4.2020.

(iii) The dispute is settled between the parties.

(iv) Since the investigation is over and charge sheet is filed, there is no chance of applicant tampering with evidence.

(v) This Court has also considered the law laid down by Apex Court in the case of Sanjay Chandra Vs. Central Bureau Investigation, reported in

(2012) 1 SCC 40.

(vi) This Court has also taken into consideration the assurance given on behalf of the applicant that he will abide by all conditions that may be imposed

by this Court.

[8] In the facts and circumstances of the case and considering the nature of allegations made against the applicant in the FIR, I am of the opinion that

this is a fit case to exercise the discretion and enlarge the applicant on regular bail. Hence, the present application is allowed and the applicant is

ordered to be released on regular bail in connection with an FIR being FIR No.11184007200244 of 2020 registered with Naswadi Police Station,

District:Chhota Udepur 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 learned 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] 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] not enter in local limits of the District, where the victim is residing, for a period of six months;

[f] shall mark presence on alternative Monday for a period of six months to the nearest Police Station, where he is going to reside for six months and

after entering into Chhota Udepur District, mark presence with the concerned Police Station on alternate Monday for a period of six months between

10.00 a.m and 2.00 p.m.

[g] furnish latest and permanent 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;

[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 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.

[10] Rule is made absolute to the aforesaid extent. Registry is directed to serve this order to the concerned authority through e-mail/fax or any other electronic mode.