

(2019) 12 GUJ CK 0069
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 20522 Of 2019

Hathiya S/O Valraj Devgansi Sumet

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 12-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 114, 363, 366, 376(2)N, 465, 471

Protection Of Children From Sexual Offences (POCSO) Act, 2012 — Section 4, 5(L), 6, 17

Citation : (2019) 12 GUJ CK 0069

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

Bench : Single Bench

Advocate : Premal S Rachh, L. B. Dabhi

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. Learned Advocate, MR. APURVA KAPADIA is permitted to file his appearance on behalf of the complainant.

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 C.R. No.I-33 of 2019 with Lalpur Police Station, Jamnagar, for the offence punishable under Sections 363, 366, 376(2)N, 465, 471, 114

of the Indian Penal Code and under Section 4, 5(L), 6, 17 of POCSO Act.

3. Learned advocate appearing on behalf submits that considering the nature applicant may be enlarged on regular suitable conditions. of the applicant

of offence, the bail by imposing

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 :-

I) The F.I.R. is registered on 05-10-2019 for the offence which is alleged to have taken place between 29-08-2019 to 30-08-2019;

II) The applicant is in custody since 05-10-2019;

III) Investigation is concluded and charge-sheet is filed;

IV) Learned Advocate for the applicant submitted that the applicant and the prosecutrix were having an affair. It is submitted that FIR came to be

registered invoking provision of POCSO Act only on the presumption of the complainant that as the age of the son is of 18 years, the prosecutrix

would be below 18 years. Otherwise, documents including Aadhar Card of the prosecutrix produced by father shown the prosecutrix to be major;

V) From the statement of the prosecutrix recorded on two different occasions, element of love affair cannot be ruled out. Learned Advocate relies

upon registration marriage certificate dated 09-07-2019;

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

against the applicant.

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.

7. 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.

8. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with C.R. No.I-33 of 2019 with

Lalpur Police Station, Jamnagar, 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 & shall not obstruct or hamper the police investigation and shall not to play mischief

with the evidence collected or yet to be collected by the police;

(c) surrender passport, if any, to the Trial Court within a week;

(d) not leave the State of Gujarat without prior permission of the Trial Court concerned;

(e) mark presence before the concerned Police Station once in a 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 Trial 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.

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