

(2021) 10 GUJ CK 0054
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 15319 Of 2021

Hirubhai Jagdishbhai Dhanka

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 20-10-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

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

Protection Of Children From Sexual Offences Act, 2012 — Section 3, 4, 12, 18

Citation : (2021) 10 GUJ CK 0054

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

Bench : Single Bench

Advocate : Nayankumar V Shukla, L.B.Dabhi

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being I-CR No.11211016210021 of 2021 registered with Dhrangadhra Taluka Police Station, Surendranagar for offence under Sections 363, 366 and 376 of the Indian Penal Code and Sections, 3,4 12 and 18 of the POCSO Act.

2. Learned Advocate appearing on behalf of the applicant submits that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

3. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.

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

5. I have heard the learned advocates appearing on behalf of the respective

parties and perused the papers. Following aspects are considered:-

I. The FIR is registered on 12.01.2021 for the offence which is alleged to have taken place on 27.12.2020.

II. The applicant is in jail since 20.01.2021.

III. The investigation is concluded and charge-sheet is filed.

IV. Submission of learned advocate for the applicant that the applicant is aged 21 years had an affair with the prosecutrix.

V. Considering the statement of the prosecutrix dated 12.01.2021, element of affair cannot be ruled out as it indicates that after eloping the applicant and the prosecutrix had gone to reside with the parents of the applicant and it is the parents of the applicant who had intimated to the police authority about the presence of the applicant and the prosecutrix at their house.

VI. The applicant is ready and willing to file an undertaking that upon attaining the age of majority the applicant will enter into the matrimonial with the prosecutrix with the consent of family members of both the sides.

VII. Learned APP under instructions of IO is unable to bring on record any special circumstances against the applicant.

6. 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.

7. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being I-CR No.11211016210021 of 2021 registered with Dhrangadhra Taluka Police Station, Surendranagar, 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;

(g) to file an undertaking that within a week of his release before this Court the applicant will enter into the matrimonial with the prosecutrix with the consent of family members of both the side upon the prosecutrix attaining the age of majority.

8. 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.

9. 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.

10. 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.

11. Rule is made absolute to the aforesaid extent.

Direct service is permitted.