

(2022) 01 GUJ CK 0066
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 21569 Of 2021

Hitesh Rameshbhai Makwana

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 18-01-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 354(B), 363, 376(A)(B)
Protection Of Children From Sexual Offences Act, 2012 — Section 3(C), 4, 7, 8, 9(M),
11(vi), 12

Citation : (2022) 01 GUJ CK 0066

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

Bench : Single Bench

Advocate : Riddhesh Trivedi, Moxa Thakkar

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.182 of 2018 registered with Nikol Police Station, Ahmedabad for offence under Sections 376(A)(B), 363, 354(B) of the Indian Penal Code and

Sections 7,8,9(M), 11(vi), 12 and 3(C), 4 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.

Learned APP submits that the trial is at the fag end and only three witnesses are

remained to be examined, wherein on the last occasion, two witnesses were present however, they could not be examined on account of the Lockdown due to Pandemic.

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 03.10.2018 for the offence which is alleged to have taken place on 02.10.2018.

II. The applicant is in jail since 05.10.2018.

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

IV. Submission of learned advocate for the applicant that pursuant to the liberty reserved in the previous order, the present application is moved.

V. It is submitted that the victim has not at all supported the case of the prosecution and has been declared hostile so also the another witness being the mother of the victim, she has also not supported the case of the prosecution.

VI. Considering the present situation of uncertainty in the conclusion of trial more particularly where the witnesses have not supported the case of the prosecution.

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.182 of 2018

registered with Nikol Police Station, Ahmedabad, 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) not to enter District Ahmedabad till the conclusion of trial except marking presence and for attending the trial.

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.