

(2022) 08 GUJ CK 0071

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 12945 Of 2022

Imran Alimamad Khalifa

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 17-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 151, 438

Indian Penal Code, 1860 — Section 363, 366, 376(2)(j), 376(2)(n), 506(2)

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

Citation : (2022) 08 GUJ CK 0071

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : DM Devnani, LB Dabhi

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr.Devnani appearing on behalf of the applicant and learned Additional Public Prosecutor Mr.Dabhi on behalf of the respondent-State.

2. By way of this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant – original accused prays for being released on anticipatory bail in connection with FIR No.11205032220546 of 2022 registered with Mundra Police Station, Kutch (West), Bhuj on 29.05.2022 for offences punishable under Sections 363, 366, 376(2)(j) and 376(2)(n) and 506(2) of the Indian Penal Code and under Sections 5(L) and 6 of the POCSO Act.

3. Learned Advocate Mr.Devnani for the applicant would submit that the present applicant and the prosecutrix were in a relationship and whereas on account of the fact that both belong to different community, the relationship was not approved by the family members of the prosecutrix and whereas on account of the same, the present FIR is filed. Learned Advocate Mr.Devnani would further draw the attention of this Court to a proceeding under Section 151 of Cr.P.C.,

dated 26.5.2022 i.e. prior to filing of the present FIR, based on an application filed by the father of the First Informant against the present applicant and whereas, in the said proceeding, the prosecutrix had inter alia stated that the prosecutrix neither apprehends any threat from the present applicant, nor is there any forcible act on behalf of the present applicant. Learned Advocate Mr.Devnani would submit that having stated as much, three days prior to the filing of the FIR, the present applicant had been arraigned as an accused on account of the fact that the family of the prosecutrix did not approve the relationship between the applicant and the prosecutrix and whereas even perusing the FIR, it appears that while the applicant and the prosecutrix had attempted to elope, they were seen by the brother of the prosecutrix and whereas the prosecutrix had thereafter gone along with her brother. Having regard to such facts, learned Advocate Mr.Devnani would submit that the present applicant may be enlarged on anticipatory bail.

4. Learned Additional Public Prosecutor Mr.Dabhi appearing on behalf of the respondent-State has vehemently opposed grant of anticipatory bail looking to the nature and gravity of the offence. Learned APP would submit that the facts would clearly show that the present applicant had engaged in physical relationship with the prosecutrix when she was a minor. Learned APP would also rely upon the investigation papers in support of the same. Having regard to the same, learned APP would submit that this Court may not grant anticipatory bail to the present applicant.

5. Having heard the learned Advocates for the parties and without going into a detailed analysis, following aspects are considered by this Court:

1. That it clearly appears that the applicant and the prosecutrix were in a relationship. It also appears that the prosecutrix had denied any threat or apprehended injury from the present applicant in an application under Section 151 of Cr.P.C., wherein the statement of the prosecutrix was recorded three days prior to filing of the FIR;

2. It also appears that when the FIR was filed, the prosecutrix was major. It further appears that while an attempt has been made to state that physical relationship had taken place when the prosecutrix was a minor and whereas there is nothing on record, including the investigation papers and the medical examination, which would show that physical relationship had taken place when the prosecutrix was a minor.

3. It also appears that the present applicant and the prosecutrix had attempted to elope and whereas since both of them were seen by the brother of the prosecutrix, the prosecutrix had dropped the plan and returned back with her brother;

4. It also appears that the applicant, though married earlier, had entered into a customary divorce with his former wife and whereas such customary divorce is filed on a stamp paper dated 15.3.2021;

5. That there are no antecedents of the applicant being involved in any criminal activities.

6. Having regard to the circumstances noted above, and considering the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors. reported in (2011)1 SCC 694, this Court is inclined to consider this application.

7. In the result, the present application is allowed by directing that in the event of applicant herein being arrested pursuant to FIR No.11205032220546 of 2022 registered with Mundra Police Station, Kutch (West), Bhuj on 29.05.2022, the applicant shall be released on anticipatory bail on furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety of like amount, on the following conditions that the applicant:

(a) shall cooperate with the investigation and make himself available for interrogation whenever required;

(b) shall remain present at the concerned Police Station on 23.08.2022 between 11:00 a.m. and 2:00 p.m.;

(c) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(d) shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the Police;

(e) shall not leave India without the permission of the Court and, if having passports shall surrender the same before the Trial Court within a week;

(f) not enter in the limits of Taluka Mundra for a period of six months from the date of release;

(g) shall at the time of execution of bond, furnish the permanent residential address to the Investigating Officer and the Court concerned and shall not change his residence till the final disposal of the case or till further orders;

(h) shall also furnish the address of residence outside Mundra Taluka, where he would be residing during the six months, to the I.O. and also to the Court at the time of execution of the bond and shall not change his residence without prior intimation to the Investigating Officer concerned;

(i) shall mark his presence once in a month (on 1st Monday) for a period of next six months at the nearest Police Station of his place of stay, when he would be staying out of Mundra Taluka, the nearest police station to be decided by the learned Trial Court;

8. Despite this order, it would be open for the Investigating Agency to file an application for police remand of the applicant to the competent Magistrate, if he thinks it just and proper and learned Magistrate would decide it on merits. The

applicant shall remain present before the learned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the learned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police remand. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if ultimately granted, and the power of the learned Magistrate to consider such a request in accordance with law. It is clarified that the applicant, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

9. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the applicant on bail. Rule is made absolute to the aforesaid extent. Direct service is permitted.