

(2021) 04 GUJ CK 0021

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 1627 Of 2021

Irfan Ali Hanifmohammad Rain

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-04-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 34, 363, 511

Protection Of Children From Sexual Offences Act, 2012 — Section 11(1), 12

Citation : (2021) 04 GUJ CK 0021

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

Bench : Single Bench

Advocate : Rafik Lokhandwala, H.K.Patel

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.100 of 2019 registered with Bardoli Police Station, Surat for offence under Sections 363, 511, 34 of the Indian Penal Code and Sections 11(1) and 12 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 13.09.2019 for the offence which is alleged to have taken place on 13.09.2019.

II. The applicant is in jail since 04.01.2020.

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

IV. The applicant was enlarged on regular bail by an order dated 21.10.2019 in Criminal Misc. Application No.5994 of 2019 in connection with offence begin C.R.No.I-100 of 2019 with Bardoli Police Station. As the applicant has failed to remain present before the Court, non-bailable warrant came to be issued.

V. Learned advocate draws attention of this Court to the finding recorded by the Sessions Court, wherein it is indicated that the applicant had remained present before the Court on the date of adjournment i.e. on 04.01.2020, but had remained present at 12:30 and as the arrest warrant was already issued and pending, arrest of the applicant was effected.

VI. Learned advocate, under the instruction, states that the applicant shall file an undertaking before the trial Court that he will attend each and every date of adjournment of the trial Court without fail and in case of breach of such condition, the applicant may be forthwith arrested and put behind the judicial custody.

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.100 of 2019 registered with Bardoli Police Station, Surat , 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) file an undertaking before the trial Court within a week of his release that he will attend each and every date of adjournment of the trial Court without fail and in case of breach of such condition, the applicant may be forthwith arrested and put behind the judicial custody.

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.