

(2023) 12 GUJ CK 0046
In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - After Chargesheet) No. 10650 Of 2023

Jaydip @ Ajay Rameshbhai Sarvaiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 13-12-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 354(A), 376(2)(n), 376(3), 506, 506(2)

Protection Of Children From Sexual Offences Act, 2012 — Section 45(L), 6, 8, 12

Citation : (2023) 12 GUJ CK 0046

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Malaykumar S Patel, Bhavin S Raiyani, H.K. Patel

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the FIR being C.R. No.11210021230312 of 2023 registered with the Katargam Police Station, Surat of the offence punishable under Sections 376(3), 376(2)(n), 354(A), 506, 506(2) of IPC and Sections 4, 5(L), 6, 8 and 12 of the POCSO Act.

2. Learned advocate appearing for the applicant has submitted that the applicant-accused was arrested on 09.04.2023 and since then he is in jail. Learned advocate for the applicant has also submitted that the investigation has already been completed and charge-sheet has also been filed. Learned advocate for the applicant has submitted that the trial has already been commenced and the deposition of the victim has also been recorded wherein she has not supported the case of the prosecution and has been declared as hostile witness. It is further submitted that the matter is already settled between the parties. Under the circumstances, learned advocate for the applicant prays that the applicant may

be enlarged on bail on any suitable terms and conditions.

3. Learned advocate Mr. Bhavin Raiyani appearing on behalf of the respondent No.1-Complainant has also made a statement that the matter is settled between the parties and prays that appropriate order may be passed.

4. The 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 has submitted that considering the role attributed to the applicant-accused, this is a fit case wherein discretionary power of this Court is not required to be exercised in favour of the applicant-accused.

5. The learned advocates appearing on behalf of the respective parties do not press for further reasoned order.

6. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers of the investigation and considered the allegations levelled against the applicant and the role played by the applicant. This Court has also considered the following aspects;

a) That the investigation has already been completed and charge-sheet has also been filed;

b) That the matter has been amicably settled between the parties which is also confirmed by the learned advocate appearing for the complainant;

c) That the applicant-accused is in jail since 09.04.2023;

7. This Court has also 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.

8. 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.

9. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.11210021230312 of 2023 registered with the Katargam Police Station, Surat, on executing a personal bond of Rs.15,000/- (Rupees Fifteen 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;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave the State of Gujarat without prior permission of the Sessions Judge

concerned;

[e] mark presence before the concerned Police Station on alternate Monday of every English calendar month for a period of six months between 11:00 a.m. and 2:00 p.m.;

[f] furnish the present address of 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 this Court;

10. 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.

11. 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.

12. 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. Rule is made absolute to the aforesaid extent.

Direct service is permitted.