

(2024) 03 GUJ CK 0006
In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Regular Bail - After Chargesheet) No.
3993 Of 2024

Kishan Dineshbhai Nakiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 01-03-2024

Acts Referred:

Indian Penal Code, 1860 — Section 376(2) (j)(n), 363, 366
Code Of Criminal Procedure, 1973 — Section 439
Protection Of Children From Sexual Offences Act, 2012 — Section 4, 6, 17

Citation : (2024) 03 GUJ CK 0006

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Urvashi K Mehta, L.B. Dabhi

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. Rule returnable forthwith. Learned APP waives service of notice of rule for and on behalf of the respondent-State.

2. 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.I-11208037230544 of 2023 registered with the Rajkot City Kuvadva Road Police Station, Rajkot of the offence punishable under Sections 376(2) (j)(n), 363, 366 of IPC and Sections 4,6 and 17 of the POCSO Act.

3. Learned advocate appearing for the applicant has submitted that the applicant-accused was arrested on 27.09.2023 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 there was a love affair between the applicant-accused and the victim girl and she on her own free will and volition, eloped with

the applicant-accused, which is evident from the statement of the victim girl recorded by the investigating officer during the course of investigation. Under the circumstances, learned advocate for the applicant prays that the applicant may be enlarged on bail on any suitable terms and conditions.

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 applicant-accused is in jail since 27.09.2023;

c) That there was a love affair between the applicant-accused and the victim girl and she, on her own will and volition, eloped with the applicant-accused which is evident from her statement recorded by the police during the course of investigation;

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.I-11208037230544 of 2023 registered with the Rajkot City Kuvadva Road Police Station, Rajkot, 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.