

(2020) 07 GUJ CK 0098
In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 9751 Of 2020

Mukesh @ Tebu Harjibhai Makwana

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 31-07-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 120B, 363, 366, 376(2)(N), 376(3)
Protection Of Children From Sexual Offences Act, 2012 — Section 8, 17, 18

Citation : (2020) 07 GUJ CK 0098

Hon'ble Judges : Vipul M. Pancholi, J

Bench : Single Bench

Advocate : Rathin P Raval, L B Dabhi, Maulik Soni

Final Decision : Allowed

Judgement

Vipul M. Pancholi, 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

C.R.No.11193008200076 of 2020 registered with Babra Police Station, District Amreli for offence under Sections 363, 366, 376(2)(N), 376(3) and

120B of the Indian Penal Code and Sections 4, 6, 8, 17 and 18 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 advocate Mr. Maulik Soni appearing for the original first informant has vehemently opposed this application. It is submitted that the

applicant is the abettor who has abetted the main accused in commission of the alleged offence. He has referred the averments and allegations made

in the FIR. Learned advocate has also referred the order passed by the Sessions Court while rejecting the application filed by the applicant. He,

therefore, urged that this application be dismissed.

5. Learned Advocates appearing on behalf of the respective parties do not press for further reasoned order.

6. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case,

nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, this Court is of the opinion that this is

a fit case to exercise the discretion and enlarge the applicant on regular bail.

7. This Court has considered following aspects,

(a) applicant is in jail since 20.06.2020;

(b) investigation is practically over as the remand period is over;

(c) learned advocate for the applicant has referred the order dated 29.06.2020 passed by the Division Bench of this Court in Special Criminal

Application No.2501 of 2020.

(d) it is submitted that at present the victim prosecutrix is in Nari Sanrakshan Gruh.

As the applicant is the abettor, looking to the role attributed to him, I am inclined to consider the case of the applicant.

8. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra Vs. Central Bureau of

Investigation, reported in [2012] 1 SCC 40.

9. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being

C.R.No.11193008200076 of 2020 registered with Babra Police Station, District Amreli 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;

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

[d] not leave the India without prior permission of the concerned trial court;

[e] mark presence before the concerned Police Station between 1st to 10th day 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 the concerned trial court;

10. The authorities will shall adhere to its own circular regarding Covid-19 and thereafter 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. 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.

11. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

12. Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/Authority

through Fax or Email.