

(2021) 10 GUJ CK 0039
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 16472 Of 2021

Mukeshbhai Vinubhai Baldhiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 11-10-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 363, 366, 376(2)(J)(N), 376(3)

Protection Of Children From Sexual Offences Act, 2012 — Section 4, 6, 18

Citation : (2021) 10 GUJ CK 0039

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

Bench : Single Bench

Advocate : Rathin P Raval, L. B. Dabhi

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. RULE. Learned APP waives service of Rule 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 FIR being I-CR No.11193002210216 of 2021 registered with Jafrabad Marine Police Station, Amreli for offence under Sections 363, 366, 376(3) and 376(2)(J)(N) of the Indian Penal Code and Sections 4, 6 and 18 of the POCSO Act.
3. 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.
4. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.
5. 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. Following aspects are considered:-

I. The FIR is registered on 29.04.2021 for the offence which is alleged to have taken place on 23.04.2021.

II. The applicant is in jail since 07.05.2021.

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

IV. The applicant aged 20 years had an affair with a prosecutrix who is aged about 14 years and 2 months.

V. Though the age of the prosecutrix is 14 years and 2 months yet the application is moved on the strength of settlement between the families which indicates that the applicant will enter into matrimony with the prosecutrix upon her attaining the age of majority.

VI. Learned APP under instructions of IO is unable to bring on record any special circumstances against the applicant.

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. The applicant is ordered to be released on regular bail in connection with FIR being I-CR No.11193002210216 of 2021 registered with Jafraabad Marine Police Station, 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 & 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) applicant shall file an undertaking within one week of his release before this Court as as well as before the concerned Trial court with regards to the fact of settlement and his commitment to enter into matrimony with the prosecutrix;

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.

13. Rule is made absolute to the aforesaid extent.

Direct service is permitted.