

(2023) 12 GUJ CK 0035

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 21603 Of 2023 (For Regular Bail - After Chargesheet)

Prajapati Ajay S/O Somabhai Mangaldas

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 12-12-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

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

Protection Of Children From Sexual Offences Act, 2012 — Section 4, 5(L), 6, 8, 12

Citation : (2023) 12 GUJ CK 0035

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Anvesh V Vyas, Manan Mehta

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.11206050230349/2023 registered with the Nandasan Police Station, Mehsana for the offence punishable under Sections 363, 366 and 376(2)(N) of the Indian Penal Code and under Sections 4, 5(L), 6, 8 and 12 of the POCSO Act.

2. Learned advocate for the applicant submitted that the so-called incident has occurred on 20.09.2023, for which, FIR has been registered on 20.09.2023 and the applicant has been arrested on 29.09.2023 and since then, he is in judicial custodial. It is submitted that now the investigation is completed and after submission of the chargesheet, the present application is preferred. Learned advocate submitted that during the course of investigation, the statement of the victim has been recorded, wherein she has categorically stated that she has developed the relation with the present applicant by her will and volition and she has eloped with the present applicant. Learned advocate submitted that even the

victim has given history before the doctor, wherein she has stated about her consensus act with the present applicant. It is, therefore, urged that considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

3. Learned APP for the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. It is submitted that the role of the present applicant is clearly spelt out from the papers of the chargesheet. It is submitted that initially FIR was registered under the provision of the IPC, however after recording of the statement of the victim, the provision of the POCSO Act has been added as the age of the victim is below 18 years. It is, therefore urged that considering above facts the present application may not be entertained.

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 of the investigation and considered the allegations levelled against the applicant and the role played by the applicant.

6. It is found out from the record that the present application is preferred after submission of the chargesheet and now the investigation is completed and the applicant is in jail since 29.09.2023. I have also perused the statement of the victim recorded by the IO during the course of investigation and the history given by the victim before the doctor at the time of her medical examination, which goes on to show that there was consensus act of the victim. Therefore considering the above factual aspects, the present application deserves to be allowed.

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 as well as in case of Satender Kumar Antil v. Central Bureau of Investigation & Anr. reported in (2022) 10 SCC 51.

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 the FIR being C.R. No.11206050230349/2023 registered with the Nandasan Police Station, Mehsana 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 concerned 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 observations of preliminary nature qua the evidence at this stage made by this Court while enlarging the applicant on bail.

12. The present application stands allowed accordingly. Direct service is permitted.