

(2023) 01 GUJ CK 0028

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 17361 Of 2022

Prakash @ Kalu Mafabhai Vadodariya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 06-01-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 114, 164, 439

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

Protection Of Children From Sexual Offences Act, 2012 — Section 4, 6, 8, 17, 18

Citation : (2023) 01 GUJ CK 0028

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

Bench : Single Bench

Advocate : N P Pandya, Hardik Soni

Final Decision : Allowed

Judgement

A.Y. Kogje, 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 I-CR No.11193060200674 of 2020 registered with the Vadiya Police Station, District Amreli, for the offences punishable under Sections 363, 366, 376(2)(F), 376(2)(N), 376(3) read with Section 114 of the Indian Penal Code and under Sections 4, 6, 8, 17 & 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 by stating that the statement recorded under Section 164 clearly indicates the ingredients of the offence. Moreover, the prosecutrix is below 15 years of age at the relevant time and the applicant was married.

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. Following aspects are considered:-

I. The FIR is registered on 29.10.2020 for the offence which is alleged to have taken place on 21.10.2020.

II. The applicant is in jail since 30.10.2020.

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

IV. The deposition of the victim has been recorded and, therefore, the present application has been filed as the victim herself has not supported the case of the prosecution.

V. The attention has been drawn to the deposition of the prosecutrix, wherein she has denied allegations with regard to the commission of rape, against the present applicant.

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

6. 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.

7. 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 discretion and enlarge the applicant on regular bail.

8. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being I-CR No.11193060200674 of 2020 registered with the Vadiya Police Station, District Amreli, for the offences punishable under Sections 363, 366, 376(2)(F), 376(2)(N), 376(3) read with SECTION 114 of the Indian Penal Code and under Sections 4, 6, 8, 17 & 18 of the POCSO Act, 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) not enter District Amreli till the completion of the trial, except for the purpose of marking presence and for attending the trial;

(f) 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.;

(g) 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;

9. 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.

10. 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. Rule made absolute to the aforesaid extent. Direct service is permitted.