
(2021) 06 GUJ CK 0095

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9145 Of 2021

Pursottam Ganpatbhai Bariya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 18-06-2021

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, 6, 12

Citation : (2021) 06 GUJ CK 0095

Hon'ble Judges : Dr Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Hardik H Dave, Dharmesh Devnani

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This successive regular bail application is filed by the Applicant â?" Accused under Section 439 of the Code of Criminal Procedure for enlarging the

applicant on Regular Bail in connection with FIR being I-C.R. No. 49 of 2019 registered with Rajgad Police Station, District- Panchmahal for the

offences punishable under Sections 363, 366 and 376(2)(N) of the Indian Penal Code and under Sections 4, 6 and 12 of the POCSO Act.

2. Heard learned Advocate Mr. Siddhant Parikh with learned advocate Mr. Hardik Dave for the Applicant and learned APP Mr. Dharmesh Devnani

for the Respondent State through Video Conference.

3. The brief facts of the case are that the applicant by giving false promise of marriage, has taken away the minor daughter of the complainant aged

14 years and 8 months at the time of commission of offence, on 21.08.2019, and

hence, the present FIR is registered.

Submission of the Parties:

4. Learned Advocate for the Applicant / Accused has submitted that in the present case earlier this Court has passed the order whereby liberty was granted to approach this Court after completion of recording of testimony of the prosecutrix and now the same is concluded, wherein the prosecutrix has not supported the case of the prosecution despite she being the prime witness. He further submitted that the applicant has family roots in the society and therefore, he is not likely to flee away from justice. That the charge sheet is filed. That he will abide by whatever conditions imposed by the Hon'ble Court. He has therefore prayed that discretion may kindly be exercised and grant bail to the Applicant Accused.

4.1 Per contra, learned APP Mr. Dharmesh Devnani has vehemently opposed this bail application and submitted that looking to the nature and gravity of offence, involvement of the Applicant / Accused discretion may not be exercised in favour of the applicant. He further submitted that the charge sheet is filed and from the charge sheet papers prima- facie case is made out. He further submitted that if the Hon'ble Court is inclined to grant bail then in such case strict conditions may be imposed to secure the presence of the Applicant Accused.

Merits of the Case:

5. This court has considered the following aspects:

(a) That in the present case it is an admitted fact that the Applicant accused has come for this Application after the charged sheet is filed.

(b) Further as per catena of decisions of Hon'ble Supreme Court, there are mainly 3 factors which are required to be considered by this court i.e.

prima facie case, availability of Applicant accused at the time of trial and tampering and hampering with the witnesses by the accused.

(c) That the learned Advocate for the Applicant has submitted that the Applicant Accused is not likely to flee away.

(d) That the Applicant Accused is in custody since 08.06.2020.

(e) The law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. C.B.I. Reported in (2012) 1 SCC 40, wherein it is held that bail is

a rule and jail is an exception.

6. Having heard the learned Advocates for the parties and perusing the record produced in this case, in the present case earlier this Court has passed

the order whereby liberty was granted to approach this Court after completion of recording of testimony of the prosecutrix and now the same is

concluded, wherein the prosecutrix has not supported the case of the prosecution despite she being the prime witness, as well as taking into

consideration the facts of the case, nature of allegations, gravity of accusation, availability of the Applicant Accused at the time of Trial etc. and the

role attributed to the present Applicant accused, the present Application deserves to be allowed and accordingly stands allowed. The Applicant

Accused â?" PURSOTTAM GANPATBHAI BARIYA is ordered to be released on regular bail in connection with the aforesaid FIR on executing a

personal bond of Rs. 10,000/- (Ten Thousand) with one surety of the like amount to the satisfaction of the trial Court, subject to the following

conditions that he shall:

(a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from

disclosing such facts to the Court or any Police Officer or tamper with the evidence.

(b) maintain law and order and not to indulge in any criminal activities.

(c) furnish the documentary proof of complete, correct and present address of his residence to the Investigating Officer and to the Trial Court at the

time of executing the bond and shall not change his residence without prior permission of the trial Court.

(d) provide his contact numbers as well as the contact numbers of the sureties before the Trial Court. In case of change in such numbers inform in

writing immediately to the trial Court.

(e) file an affidavit stating his immovable properties whether self acquired or ancestral with description, location and present value of such properties

before the Trial Court, if any.

(f) not leave India without prior permission of the Trial Court

(g) mark presence before the concerned police station on every 1st day of English calendar month between 12:00 Noon and 2:00 PM till one year or

till the trial is concluded, whichever is earlier.

(h) surrender passport, if any, to the Trial Court within a week. If he does not possess passport, he shall file an Affidavit to that effect.

(i) shall maintain all the rules and regulations framed by the Municipality regarding contemporary status of corona virus/Covid-19, State Government or by any competent authority, including social distancing.

7. Bail bond to be executed before the Trial Court having jurisdiction to try the case. It would be open for the Trial Court concerned to give time to furnish the solvency certificate if prayed for.

8. If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities will release the Applicant forthwith only if he is not required in connection with any other offence for the time being.

9. Rule is made absolute to the aforesaid extent. The Registry is directed to communicate this order by Fax / by E-mail to the concerned Court /

Authority.