

(2020) 08 GUJ CK 0153
In the Gujarat High Court
Case No : R/Criminal Appeal No. 671 Of 2020

Rakshitabhai Rajeshbhai Parmar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 13-08-2020

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 14
Indian Penal Code, 1860 — Section 114, 363, 366, 376
Protection Of Children From Sexual Offences Act, 2012 — Section 3, 5(I)
Code Of Criminal Procedure, 1973 — Section 439

Citation : (2020) 08 GUJ CK 0153

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : Nirav C Sanghavi, JK Shah

Final Decision : Allowed

Judgement

Ashutosh J. Shastri, J

1. Present appeal is filed under Section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, 1989) for seeking regular bail

in connection with the FIR, being C.R. No.I- 207 of 2014 registered with Rajkot A-Division Police Station, Rajkot City for the offences punishable

under Sections 363, 366, 376 of the Indian Penal Code, Sdection 3(2)(5) of the Atrocity Act and Sections 3 & 5(I) of the Protection of Children from

Sexual Offences and Harassment Act (POCSO Act).

2. Pursuant to the admission of the present appeal and notice for final disposal vide order dated 1.7.2020, it was expected that the respondent-

complainant would respond to the process of this Court. But, on previous occasion, Rule was stated to be not served. As a result of this, vide order

dated 23.7.2020, time was given and today, when the matter is posted for hearing, though served, the respondent No.2 has chosen not to appear. As a result of this, upon request of learned advocates, the matter is taken up for hearing.

3. Learned advocate Mr. Nirav Sanghavi appearing on behalf of the appellant has submitted that in fact, in this very complaint, previously, the appellant was already released on regular bail under Section 439 of the Code of Criminal Procedure vide order dated 10.2.2015 long back but, it appears that on account of some inadvertence, the appellant could not remain present and therefore, warrant was issued against the appellant and then, the appellant came to be arrested. But, according to Mr. Sanghavi, in fact, the appellant with a view to earn livelihood had gone outside for the purpose of labour work and only because of that genuine reason, he could not respond to the hearing. In fact, he has given an assurance that he would cooperate regularly with the trial and will not commit any mistake now in not appearing and considering the fact that this was the only reason for which warrant was issued, the appellant was ready and willing to file even undertaking before this Court as well as before the Trial Court to cooperate with the hearing and to remain present regularly as and when required and as such, keeping this facts and circumstance in mind, a request is made to release the appellant on regular bail. In fact, according to Mr. Sanghavi, the appellant has not committed any offence. The victim as well as the appellant both were in deep love and affection and as such, looking to the nature of the offence and looking to the aforesaid inadvertence, and the fact that the victim as well as the appellant went away on account of free will and volition, the appellant be considered for release on regular bail.

4. As against the aforesaid submissions, learned APP Mr. J.K. Shah has submitted once discretion is exercised in favour of the appellant way back in February 2015, it was obligatory on the part of the appellant to remain present and cooperate with the hearing of the trial and it is only on account of the fact that the appellant himself committed a default, he again came to be arrested. But, considering the fact that on previous occasion, the Coordinate Bench has also considered the appellant to be released on bail and now, since the undertaking is inclined to be filed by the appellant, it is left to the discretion of the Court without much resistance.

5. Having heard learned advocates appearing for the parties and having gone through the material on record, it is undisputedly reflecting from the record that in this very offence, in February 2015, the appellant was enlarged on regular bail under Section 439 of the Code of Criminal Procedure and further, the only circumstance against the appellant is that he did not cooperate with the hearing of the trial. As a result of this, pursuant to the warrant, he was arrested. Now, since the appellant is inclined to submit specific undertaking to remain present on each and every date, when he is called upon, the Court is inclined to exercise the discretion in favour of the appellant.

6. Hence, the present appeal is allowed. The appellant is ordered to be released on regular bail in connection with FIR being C.R. No.I-207 of 2014 registered with Rajkot A-Division Police Station, Rajkot City 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 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;
- [g] file an undertaking within a period of ONE WEEK from the date of his release, stating that he shall cooperate with the hearing of the trial and shall appear on each and every date when he is required to appear in the case and such undertaking shall be filed in a specific form before the concerned Trial Court and it is made clear that in case of breach of remaining present, this order shall stand automatically cancelled.

7. The authorities shall adhere to its own Circular relating to COVID-19 and, thereafter, will release the appellant 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 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 is clarified that

the Court below shall not be influenced by any of the observation made in this order during the trial.

8. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.