

(2022) 05 GUJ CK 0044

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 8269 Of 2022

Ramdevbhai Rajabhai Baraiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 12-05-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 376, 506(2)

Citation : (2022) 05 GUJ CK 0044

Hon'ble Judges : Niral R. Mehta, J

Bench : Single Bench

Advocate : Denish V Mavadhiya, JK Shah

Final Decision : Allowed

Judgement

Niral R. Mehta, J

Rule. Learned Additional Public Prosecutor waives service of notice of Rule on behalf of respondent – State.

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being C.R.No.11203055220025 of 2022 registered with Shil Police Station, District – Junagadh for offence under Sections 376 and 506(2) of the IPC.

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 looking to the nature and gravity of the offence.

4. Learned Advocates appearing on behalf of the respective parties do not press for further reasoned order.

5. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

6. This Court has considered following aspects,

(a) The investigation is over and the charge-sheet is filed.

(b) The applicant is behind the bars since 20.3.2022.

(c) Considering the version of FIR as well as the charge-sheet papers, prima facie, it appears that there is some acquiescence between the present applicant and the complainant.

(d) Considering the age of the applicant as 40 years and thereby, possibility of consensual relationship cannot be ruled out.

(e) Considering the fact that now since the charge-sheet is filed and the investigation is over, nothing further requires to be recovered and/or discovered from the present applicant and thereby, no further custodial interrogation is required.

(f) Considering the pendency in the sessions court, the trial may take its own course and even no fruitful purpose would be served by keeping the applicant in jail.

In the facts and circumstances of the present case and considering the role attributed to the applicant and the allegations levelled against him, the case of the applicant deserves consideration and, therefore, I am inclined to consider the case of 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 Vs. Central Bureau of Investigation, reported in [2012] 1 SCC 40.

8. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being C.R.No.11203055220025 of 2022 registered with Shil Police Station, District – Junagadh 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;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave the 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] shall not enter the local limits of Shil Police Station, District Junagadh for a period of three months, except for the purpose of marking presence and attending the trial;

[g] 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;

9. The authorities shall adhere to its own Circular relating to COVID-19 and, thereafter, will release the applicant only if they are 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. 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.

10. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

11. Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.