

(2021) 02 GUJ CK 0087

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 2932 Of 2021

Sanjay Harchadbhai Bhangi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 24-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 376(3)

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

Citation : (2021) 02 GUJ CK 0087

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

Bench : Single Bench

Advocate : Yogendra Thakore, LB Dabhi

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. RULE. Learned APP Mr.L.B.Dabhi waives service of Rule on behalf of the respondent State.

2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being CR

No.11206044200134 of 2020 registered with Mehsana 'A' Division Police Station for offence under Section 376(3) of the Indian Penal Code and

Sections 4, 6 and 8 of the POCSO Act.

3. 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.

4. Learned APP appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.

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

6. 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 18.02.2020 for the offence which is alleged to have taken place on 18.02.2020.

II. The applicant is in jail since 19.02.2020.

III. Investigation is concluded and charge sheet is filed.

IV. Submission of learned Advocate for the applicant that the applicant aged 19 years at the time of offence was having an affair with the prosecutrix aged 14 years.

V. Considering the statement of the prosecutrix dated 18.02.2020, element of love affair cannot be ruled out.

VI. Submission of learned Advocate for the applicant that the applicant is ready and willing to enter into matrimony with the prosecutrix upon her attaining age of majority as per the wishes of the family of the prosecutrix.

VII. Learned APP under instructions of IO is unable to bring on record any special circumstances against 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 v. Central Bureau of Investigation, reported in [2012]1 SCC 40.

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 FIR being CR

No.11206044200134 of 2020 registered with Mehsana 'A' Division Police Station, 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 to enter District Mehsana till the evidence of the prosecutrix is concluded;

(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;

(h) to file an undertaking before this Court within two weeks of release to the effect that the applicant shall enter into matrimony with the prosecutrix

upon her attaining age of majority as per the wishes of the family of the prosecutrix.

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 Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter.

11. 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.

12. 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.

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