

(2021) 03 GUJ CK 0080

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 3914 Of 2021

Santubhai Manubhai Rathod

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 16-03-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 363, 366, 376(j)(i)(n)

Protection Of Children From Sexual Offences Act, 2012 — Section 3, 4, 5(I)(ii), 5(j), 6, 8

Citation : (2021) 03 GUJ CK 0080

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

Bench : Single Bench

Advocate : MH Shekhawat, Amitkumar U Kachave, HK Patel

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. RULE. Learned APP Mr.H.K.Patel 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 I-CR No.11822021200489 of 2020 registered with Navsari (Rural) Police Station for offence under Sections 363, 366 and 376(j)(i)(n) of the Indian Penal Code and Sections 3, 4, 5(I) (ii), (j), 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 16.03.2020 for the offence which is alleged to have taken place one year before 14.01.2020.

II. The applicant is in jail since 17.03.2020.

III. Investigation is concluded and charge sheet is filed.

IV. Submission of learned Advocate for the applicant that the applicant aged 21 years was having an affair with the prosecutrix aged 16 years and 9 months.

V. Considering the statement of the prosecutrix dated 21.03.2020, element of love affair cannot be ruled out.

VI. Learned Advocate for the applicant drew attention of the Court to Annexure-D, which is a compromise affidavit of the original complainant which indicates that the families have come to terms and now victim girl and the applicant have decided to marry each other with the consent of both families.

VII. Submission of learned Advocate for the applicant that the applicant is ready and willing to file an undertaking to the effect that he will abide by/comply with terms of compromise and enter into matrimony with the prosecutrix as and when she attains age of majority.

VIII. 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 I-CR No.11822021200489 of 2020 registered with Navsari (Rural) 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) 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.;

(f) 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;

(g) to file an undertaking before the trial Court within two weeks of release to the effect that the applicant will abide by/comply with terms of compromise and enter into matrimony with the prosecutrix as and when she attains age of majority.

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.