
(1993) 02 GUJ CK 0043
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Mahesh Nagardas Thakore

RESPONDENT

Date of Decision : 04-02-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439(2)
Penal Code, 1860 (IPC) — Section 363, 366, 376

Citation : (1993) 1 GLR 893

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—Can a man in the name of love affair be permitted to elope with a minor girl of nearly 11 1/2 years and claim immunity from the clutches and rigours of the machinery of criminal law ? This is one of the main questions arising in this petition u/s 439(2) of the Criminal Procedure Code, 1973 ("the Cr. P. C." for brief).

2. The facts giving rise to this petition may be summarised thus : One minor girl named Sharda aged about 11 1/2 years was said to have left her parental home under some pretext. The respondent herein was suspected to have enticed her away. The necessary complaint was lodged by the father of the girl charging the respondent herein with the offences punishable under Sections 363 and 366 of the Indian Penal Code, 1860 ("the I.P.C." for brief). It appears that the respondent was arrested in connection with the offence registered against him at the instance of the father of the minor girl in question. The respondent herein appears to have moved the learned Sessions Judge of Ahmedabad for bail. His application came to be registered as Criminal Miscellaneous Application No. 2514 of 1992. It appears to have been assigned to the learned Additional Sessions Judge of Court No. 9 at Ahmedabad for hearing and disposal. By his reasoned order passed on 17th December, 1992 below the bail application registered as Criminal Miscellaneous Application-No. 2514 of 1992, the respondent has been enlarged on bail. The aggrieved State of Gujarat has preferred this petition before this Court by invoking its powers u/s 439(2) of the Cr. P. C. for

cancellation of the bail granted in favour of the respondent.

3. A xerox copy of the School Leaving Certificate is found in the police papers. Her birth date is shown to be 12th June, 1981 therein. The date of the incident mentioned in the First Information Report is 24th November, 1992. She would therefore be about 11 1/2 years old on the date of the incident. At that stage she could not be said to be possessing any mature sense of understanding as to what is good or bad for. In fact, at that stage she had not entered even her teens. At that stage a child is prone or susceptible to any kind of allurements, inducement or temptation. It is not necessary to have any overt act or allurements, inducement or temptation. Some conduct on the part of a person can also provide such allurements and the like. Such person could also be the one having eloped with her. One such conduct could be to draw that minor girl to fall in love. At that stage, a minor girl might be reading certain fairy tales and might be thinking of her dream prince who would come to her rescue in the hour of need, more particularly when she is not treated well in her parental home. A show of sympathy can easily win over a girl below the age of 12 years. This exactly appears to have happened in the present case.

4. Shri Dave, the learned Advocate for the respondent, is harping upon the fact that in her statement before the Police she has claimed to be of the age of 18 years and she has absolved him from any kind of responsibility in her leaving her parental place. I have perused the statement of the minor girl from the police papers. She has clearly indicated therein that she had a love affair with the present respondent. She has also stated therein that she was not treated well by her father in her parental home. According to her, her mother has remarried and the male spouse of the remarriage becomes her step-father. It is also stated by her that she left her parental home under the pretext of a visit to toilet and contacted the respondent near the icecream parlour where she was standing. She is stated to have informed him that she had left her home and she was puzzled as to what to do and thereupon the respondent suggested that they should elope or run away. This statement of hers clearly indicates that he had won her over and tacitly induced her to leave her parental home and to contact him at the ice-cream parlour. The learned Additional Sessions Judge has found that the respondent is aged about 22 years. A person of that age cannot be said to be deprived of reason as to know what would be the consequences of his elopement with a minor girl of hardly 11 1/2 years old. It is no defence that she was madly in love with him. It is no defence either that before the Police she declared her age to be of 18 years. The declaration of her age to be of 18 years before the Police as against 11 1/2 years as disclosed by the School Leaving Certificate on record would go to show what influence the respondent wielded on her while they remained together. It clearly transpires from her statement before the Police that they were together from 24th November, 1992 till they were found by the Police about a week later. She has also mentioned therein about enjoyment of sexuality with the respondent. Of course the charge of the offence punishable u/s 376 of the I.P.C. is yet to be levelled. That is however no ground

that the bail granted to the respondent should not be cancelled.

5. In view of my aforesaid discussion, I think that the learned Additional Sessions Judge was not right in releasing the present respondent on bail keeping in mind the gravity of the case inasmuch as the respondent was found to be aged 22 years and the girl was found to be almost half his age, To allow such accused to remain on bail might set a bad example and might embolden such young person to play with lives of minor girls like the one found involved in this case. It might also enable him to win over the minor girl involved in this case so as to destroy the prosecution case altogether.

In the result, this petition is accepted. The impugned order passed by the learned Additional Sessions Judge is quashed and set aside. The bail granted by the lower Court in favour of the respondent is hereby cancelled. The respondent is directed to surrender to custody on or before 18th February, 1993. Rule is accordingly made absolute.