

(2021) 05 GUJ CK 0012
In the Gujarat High Court
Case No : R/Criminal Appeal No. 440 Of 2021

Thakor Viraji Gabhirji

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 03-05-2021

Acts Referred:

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(2)(5), 3(2)(5A), 14(A)(2)
Indian Penal Code, 1860 — Section 363, 366 and 376(2)(N)
Protection Of Children From Sexual Offences Act, 2012 — Section 4, 5(L), 6

Citation : (2021) 05 GUJ CK 0012

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : O I Pathan, J.K.Shah

Final Decision : Allowed

Judgement

A.S. Supehia, J

[1]. Though served, the first informant-respondent No.2 has chosen not to appear. The Court had also adjourned the matter on earlier occasion for

entering appearance on behalf of the first informantâ?" respondent No.2.

[2]. ADMIT. Learned Additional Public Prosecutor waives service of notice of admission on behalf of respondent No.1 â?" State.

[3]. The present appeal is filed under Section 14(A)(A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short

'the Atrocities Act'), by the appellant â?" original accused for regular bail in connection with an F.I.R. being C.R. No.11206023201128 of 2020

registered with Kheralu Police Station, District: Mehsana for the offences under Sections 363, 366 and 376(2)(N) of the Indian Penal Code, 1860,

under Sections 4, 5(L), 6 and 8 of the Prevention of Children From Sexual Offences Act, 2012 and under Sections 3(2)(5-A), 3(2)(5) of the Prevention

of the Atrocities Act. the first informant along with his wife went for labour work in the morning and his daughter and son were present at the house,

and at around 11 O'clock when the first informant returned to his house and inquired from his son about the daughter, his son said that in the morning

she had gone in the market and has still not returned and, therefore, the first informant tried to search his daughter at his relatives' house and after that

he went to the house of the appellant â?" original accused but his father also not did not give proper answer and thereafter, after two days, the FIR

came to be registered with name.

[5]. Learned advocate for the appellant â?" original accused has submitted that the first informant has admitted in his statement that he is aware about

the relationship between the present appellant â?" original accused and his daughter. It is submitted that the prosecutrix in her statement has stated

that she herself had gone with the present appellant â?" original accused. It is further submitted that the prosecutrix went with with the present

appellant at different places.

[5.1] Learned advocate for the appellant has also submitted that it clearly seems that both are having love affair, and there is contradiction in the

statement of the first informant and the prosecutrix. It is further submitted that the appellant does not have any criminal antecedents. It is further

submitted that present appellant is of only 23 years.

[5.2] Learned advocate for the appellant â?" original accused has also submitted that considering the nature of allegations, role attributed to the

appellant â?" original accused, the appellant-original accused may be enlarged on regular bail by imposing suitable conditions.

[6]. Learned Additional Public Prosecutor appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and

gravity of the offence.

[7]. I have heard learned advocates appearing on behalf of the respective parties, through videoconferencing.

[8]. This Court has also taken into consideration the law laid down by the Apex Court in the case of Sanjay Chandra versus Central Bureau

Investigation, (2012) 1 SCC 40.

[9]. In the facts and circumstances of the case and considering the nature of allegations made against the appellant in the FIR, I am of the opinion that discretion is required to be exercised in favour of the appellant and enlarge the appellant-original accused on regular bail.

[10]. This Court has considering the following aspects:

- (i). The role attributed to the appellant â?" original accused;
- (ii). The appellant is in jail since 26.10.2020;
- (iii). Investigation is over and charge-sheet is filed;
- (iv). The appellant is aged about 23 years young boy;
- (v). It appears that there is love affair between the appellant and the prosecutrix.

[11]. In the result, the present appeal is allowed and the appellant â?" original accused is ordered to be released on regular bail in connection with an

offence being C.R. No.11206023201128 of 2020 registered with Kheralu Police Station, District: Mehsana 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 learned Trial Court and subject to the conditions

that the appellant 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 State of Gujarat without prior permission of the Sessions Judge concerned;
- [e]. furnish latest and permanent 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 Trial Court;
- [f]. not enter Taluka-Kheralu, District-Mahsana till the deposition of the victim is over and he shall provide the address where he would reside to the Investigating Officer and shall mark his presence before the nearest Police Station till the deposition of the victim is over and thereafter;
- [g]. mark presence before the concerned Police Station on alternate every Monday for initial six months and thereafter, on alternate Monday of every English calendar month, for a period of six months between 10:00 a.m. and 2:00 p.m.;

[12]. 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 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.

[13]. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions in accordance with law. At the trial, learned

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

appellant on bail. Present Appeal is allowed.

[14]. Registry is directed to intimate the concerned jail authority and the concerned Sessions Court about the present order by sending a copy of this

order through Fax message, email and/or any other suitable electronic mode.

[15]. Learned advocate for the appellant is also permitted to send a copy of this order to the concerned jail authority and the concerned Sessions Court

through Fax message, email and/or any other suitable electronic mode.