

(2022) 05 GUJ CK 0038

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 8289 Of 2022

Thakore Kanuji Vishnuji

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 11-05-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Protection Of Children From Sexual Offences Act, 2012 — Section 12, 17
Indian Penal Code, 1860 — Section 114, 323, 324, 354A, 354D(1)(1), 504
Gujarat Police Act, 1951 — Section 135

Citation : (2022) 05 GUJ CK 0038

Hon'ble Judges : Niral R. Mehta, J

Bench : Single Bench

Advocate : Pawan A Barot, Sweta P Barot, Hardik Barot, Karan Y Vyas, Pranav Trivedi

Final Decision : Allowed

Judgement

Niral R. Mehta, J

1. This application is filed by the applicants under Section 439 of the Code of Criminal Procedure, 1973 for regular bail in connection with FIR registered as I-C.R.No.11216009220199 of 2022 with MANSA POLICE STATION, GANDHINAGAR DISTRICT for the offence punishable under Sections 354-A, 354-D(1)(1) 323, 324, 504 and 114 of the Indian Penal Code, 1860, Sections 12 and 17 of Protection of Children from Sexual Offences Act, 2012 (POCSO) and Section 135 of the Gujarat Police Act.

2. Learned advocate appearing on behalf of the applicants submits that considering the nature of offence, the applicants may be enlarged on regular bail by imposing suitable conditions.

3. On the other hand, the learned Additional Public Prosecutor appearing for 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 a further reasoned order.

5. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers. Following aspects are considered :-

I) The F.I.R. is registered on 09.04.2022 for the offence, which is alleged to have taken place on 09.04.2022;

II) The applicants are in custody since 09.04.2022;

III) The Investigation is almost over, however, charge-sheet is yet to be filed;

IV) During the course of custody, the recovery has already been made from the applicants, and therefore, nothing further requires to be recovered or discovered from the applicants;

V) Considering version of F.I.R. and police papers, the applicants are not involved so far as offence of POCSO is concerned and section 354(A) and 354(D)(1)(1) is concerned, however, they were accompanying another accused, who had passed on a chit, and thereafter, upon arrival of brothers of girl, scuffle took place;

VI) Considering the fact that there is a cross FIR as well;

VII) Further, considering the offence and the punishment prescribed, the trial may take its own course; no fruitful purpose would be achieved by keeping in the present applicants in jail;

VIII) No adversial fact would be brought on record by learned Additional Public Prosecutor against the applicants.

6. This Court has 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.

7. In the facts and circumstances of the case and considering the nature of the allegations made against the applicants in the First Information Report, 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 applicants on regular bail.

8. Hence, the present application is allowed. The applicants are ordered to be released on regular bail in connection with I- C.R.No.11216009220199 of 2022 with MANSA POLICE STATION, GANDHINAGAR DISTRICT on executing a personal bond of Rs.10,000/= (Rupees Ten Thousand Only) EACH with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that they 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 their passports, 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 their 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 addresses of their residences to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change their residences without prior permission of Trial Court;

(g) Not enter into limits of Mansa Taluka, till the charge sheet is filed except marking their presence before concerned police station and/or before the concerned Court for the purpose of trial;

9. The authorities will release the applicants 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.

10. 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.

11. 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 applicants on bail.

12. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent. Direct Service is permitted.