

(2021) 09 GUJ CK 0016

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 14659 Of 2021

Thakore Vikramji Dashrathji Manaji

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-09-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 363, 366, 375, 376, 37692)(N)

Protection Of Children From Sexual Offences Act, 2012 — Section 4, 5(L), 6, 8

Citation : (2021) 09 GUJ CK 0016

Hon'ble Judges : S.H.Vora, J

Bench : Single Bench

Advocate : Pawan A Barot, Manan Mehta

Final Decision : Allowed

Judgement

S.H.Vora, J

Rule. Learned APP waives service of notice of rule for the respondent State.

1. Heard learned advocate for the applicant and learned APP for the respondent State through V.C.

2. This application is filed under Section 439 of the Code of Criminal Procedure for regular bail in connection with F.I.R. registered at C.R. No. I - 11206044210874 of 2021 with Mehsana "A" Division Police Station for the offences punishable under Sections 363, 366 and 37692)(N) of the IPC and u/s 4, 5(L), 6, 8 of the POCSO Act.

3. Learned advocate for the applicant has submitted that the applicant and the prosecutrix were in love with each other and the prosecutrix accompanied the applicant of her own and thereby, abandoned the guardianship of her parents voluntarily.

4. Learned APP, while opposing the application, has submitted that at the

relevant time, the prosecutrix was aged 17 years 10 months old. She being the minor, the question of consent does not arise and therefore, the offence u/s 376 read with POCSO Act has been committed and therefore, the applicant may not be enlarged on bail.

5. Heard learned advocates appearing for the respective parties in great detail and perused the records.

6. This is an unusual case of boy and girl having affair. As the prosecutrix was minor, the applicant is sent behind prison because of the complaint lodged by the complainant. Undoubtedly, a minor girl is to be protected under law as there are number of instances of sexual abuses of minor girls and therefore, there is a special legislation of POCSO in the year 2012 and amendment in sections 375 and 376 of the IPC in 2014. The judiciary takes a very serious note of sexual offences against women and specially against minor girls. Upon reading of the statement of the prosecutrix, they both eloped. Further, the trial Court rejected bail application mainly on the ground that the girl is minor and her consent is immaterial.

7. In the present case, the prosecutrix is 17 years 10 months old and the accused is 28 years old. It appears from the record and the statement of the prosecutrix that the prosecutrix was in love with the applicant and left the home of her own and moved with the applicant at various places.

These are the mitigating factors and therefore, present application deserves consideration.

8. Hence, the application is allowed and the applicant is ordered to be released on bail in connection with C.R. No. I - 11206044210874 of 2021 with Mehsana "A" Division Police Station, on executing a 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 the applicant 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] not leave the territory of India without prior permission of the Sessions Judge concerned;

[d] appear before the Investigation Officer concerned, as and when required for investigation purpose and attend the Court concerned regularly.

[e] furnish the present address of residence along with the proof to the I.O. concerned and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of Sessions Court concerned;

9. The competent authority will release the applicant only if the applicant 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 take appropriate action in the matter. 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. 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.

10. Rule made absolute to the aforesaid extent.

Direct service is permitted.