

(2021) 06 GUJ CK 0096

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 7905 Of 2021

Vijaysinh Vajesinh Rathod

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 18-06-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 114, 323, 342, 363, 366, 376(2)(g), 506(2)

Protection Of Children From Sexual Offences Act, 2012 — Section 4, 12

Citation : (2021) 06 GUJ CK 0096

Hon'ble Judges : Dr Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : YV Vaghela, Dharmesh Devnani

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This successive regular bail application is filed by the Applicant â?" Accused under Section 439 of the Code of Criminal Procedure for enlarging the

applicant on Regular Bail in connection with FIR being C.R. No. 11207036200783 of 2020 registered with Kalol Police Station, District-Panchmahal

for the offences punishable under Sections 363, 366, 376(2)(g), 342, 323, 506(2) and 114 of the Indian Penal Code and under Sections 4 and 12 of the

POCSO Act.

2. Heard learned Advocate Mr. Y. V. Vaghela for the Applicant and learned APP Mr. Dharmesh Devnani for the Respondent State through Video

Conference.

3. The brief facts of the case are that a complaint came to be filed by one Ramanbhai Rumalbhai Chunara stating that he is residing at Village-

Gutardi, Vaghri Vas, Taluka â?" Savli, District â?" Vadodara with his family and is working in Bajaj Company as a worker since last 15 months. It is

further stated in the FIR that they are five sisters and two brothers, out of which his younger brother Ganpatbhai had expired long back and he has

three children, Hetalben is married at Village- Kada, Hiralben aged 16 years and younger brother Pritesh. That Hiral and his brother Pritesh were

residing at their maternal uncleâ??s home â?" (Dhulabhai Koyabhai Chunara) since childhood at Naranpura Village, Taluka â?" Kalol. On

02.08.2020, Hiral went to his maternal uncleâ??s home at Village â?" Naranpura along with Pritesh for Rakshabandhan. That on 04.08.2020, the

complainant received a phone call from his brother-in-law â?" Dhulabhai Koyabhai Chunara at about 2.30-3.00 p.m. that Hiral has gone somewhere

and is missing since yesterday night. That on inquiry, Hiral was found in the house of one Vijaybhai Vajesinh Rathod, and therefore, the complainant

and other family members had gone there with other villagers, where Hiral was found in the house of Vijaybhai and she had received injuries near

eyes and on stomach and some blood spot was also found on her clothes. That Hiral informed that on the date of incident when she was sleeping, at

about 2.00 Oâ??Clock in the night hours, Chirag Vijaybhai Rathod of the said village abducted her from her house and told her to get married with

him and thereafter Chirag had committed the alleged offence as stated in the FIR and thereafter on the next day morning, near Narmada Canal,

Chiragâ??s parents i.e. Meenaben and Vijaybhai arrived and took her to their house where she was beaten up by Meenaben and Vijaybhai ,

therefore, the present FIR came to be lodged against Chirag for the alleged offences punishable under IPC and POCSO Act.

Submission of the Parties:

4. Learned Advocate for the Applicant / Accused has vehemently submitted that in the present case, the applicant-Accused is father of the main

accused. He further submitted that this Court has enlarged the main accused - Chiragkumar @ Chiliyo S/o Vijaysinh Rathod by order dated

11.02.2021 in Criminal Misc. Application No. 1445 of 2021, therefore parity may kindly be given to the present applicant. He also submitted that there

is an amicable settlement arrived at between the parties by order dated 26.02.2021 in Criminal Misc. Application No. 3069 of 2021. He also submitted

that the role attributed to the present application is lesser than the role attributed to Chiragkumar, who has been enlarged by the Co-ordinate Bench on Regular Bail. That the charge sheet is filed. That he will abide by whatever conditions imposed by the Hon'ble Court. He has therefore prayed that discretion may kindly be exercised and grant regular bail to the Applicant Accused.

4.1 Per contra, learned APP Mr. Dharmesh Devnani has vehemently opposed this bail application and submitted that looking to the nature and gravity of offence, involvement of the Applicant / Accused discretion may not be exercised in favour of the present applicant. He further submitted that if the Hon'ble Court is inclined to grant bail then in such case strict conditions may be imposed to secure the presence of the Applicant Accused.

Merits of the Case:

5. This court has considered the following aspects:

(a) That in the present case it is an admitted fact that the Applicant accused has come by way of this Application after the charged sheet is filed.

(b) Further as per catena of decisions of Hon'ble Supreme Court, there are mainly 3 factors which are required to be considered by this court i.e.

prima facie case, availability of Applicant accused at the time of trial and tampering and hampering with the witnesses by the accused.

(c) That the learned Advocate for the Applicant has submitted that the Applicant Accused is not likely to flee away.

(d) That the Applicant Accused is in custody since 11.08.2020.

(e) The law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. C.B.I. Reported in (2012) 1 SCC 40, wherein it is held that bail is

a rule and jail is an exception.

6. Having heard the learned Advocates for the parties and perusing the record produced in this case, the present applicant-Accused is father of the

main accused. That this Court has enlarged the main accused - Chiragkumar @ Chiliyo S/o Vijaysinh Rathod, therefore parity is given to the present

applicant. That the role attributed to the present applicant is lesser than the role attributed to the main accused, who has been enlarged by the Co-

ordinate Bench on Regular Bail. Further, there is an amicable settlement arrived at between the parties by order dated 26.02.2021 in Criminal Misc.

Application No. 3069 of 2021 and as well as taking into consideration the facts of

the case, nature of allegations, gravity of accusation, availability of the Applicant Accused at the time of Trial etc. and the role attributed to the present Applicant accused, the present Application deserves to be allowed and accordingly stands allowed. The Applicant Accused " VIJAYSINH VAJESINH RATHOD is ordered to be released on regular bail in connection with the aforesaid FIR on executing a personal bond of Rs. 10,000/- (Ten Thousand) with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that he shall:

- (a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer or tamper with the evidence.
- (b) maintain law and order and not to indulge in any criminal activities.
- (c) furnish the documentary proof of complete, correct and present address of his residence to the Investigating Officer and to the Trial Court at the time of executing the bond and shall not change his residence without prior permission of the trial Court.
- (d) provide his contact numbers as well as the contact numbers of the sureties before the Trial Court. In case of change in such numbers inform in writing immediately to the trial Court.
- (e) file an affidavit stating his immovable properties whether self acquired or ancestral with description, location and present value of such properties before the Trial Court, if any.
- (f) not leave India without prior permission of the Trial Court.
- (g) mark presence before the concerned police station on every 1st day of English calendar month between 12:00 Noon and 2:00 PM till one year or till the trial is concluded, whichever is earlier.
- (h) surrender passport, if any, to the Trial Court within a week. If he does not possess passport, he shall file an Affidavit to that effect.
- (i) shall maintain all the rules and regulations framed by the Municipality regarding contemporary status of corona virus/Covid-19, State Government or by any competent authority, including social distancing.

7. Bail bond to be executed before the Trial Court having jurisdiction to try the case. It would be open for the Trial Court concerned to give time to

furnish the solvency certificate if prayed for.

8. If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according

to law. The Authorities will release the Applicant forthwith only if he is not required in connection with any other offence for the time being.

9. Rule is made absolute to the aforesaid extent. The Registry is directed to communicate this order by Fax / by E-mail to the concerned Court /

Authority.