

(2023) 05 GUJ CK 0013
In the Gujarat High Court
Case No : R/Criminal Appeal No. 369 Of 2023

Vikas Sahiram Kurmi (Varma)

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 02-05-2023

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(w) (i), 3(w)(ii), 3(2)(5), 14(A)(2)
Indian Penal Code, 1860 — Section 363, 366, 376(3)
Protection Of Children From Sexual Offences Act, 2012 — Section 3A, 4, 17

Citation : (2023) 05 GUJ CK 0013

Hon'ble Judges : Nirzar S. Desai, J

Bench : Single Bench

Advocate : Sangita N Nandankar, Hardik Soni, Raksha Khadet

Final Decision : Allowed

Judgement

Nirzar S. Desai, J

1. Learned advocate Ms.Raksha Khadet is permitted to file her vakalatnama for original complainant. Registry to accept the same.

2. Heard learned advocate Ms.Nandankar for the applicant and learned Additional Public Prosecutor Mr.Soni for the respondent – State.

3. By way of the present appeal under Section 14 (A)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, the applicant accused has prayed to release him on regular bail in connection with FIR being C.R.No.11191028221186 of 2022 registered with Vejalpur Police Station, District Ahmedabad City for the offences punishable under Sections 363, 366 and 376(3) of the Indian Penal Code, Sections 3A, 4 and 17 of the Protection of Children from Sexual Offences Act and Sections 3(1)(w) (i), 3(w)(ii) and 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. Learned advocate for the applicant submitted that, the applicant is not

involved in commission of offence as alleged in the FIR and therefore, looking to the role of the applicant and nature of the allegations, the applicant is required to be enlarged on regular bail by imposing suitable terms and conditions.

4. On the other hand, learned learned APP appearing for the respondent – State vehemently opposes the application and submits that offence committed by the present applicant is serious in nature affecting the society at large and looking to the facts as well as the allegations made against the applicant, no discretion would be required to be exercised.

5. In the facts and circumstances of the case and considering the nature of allegations, this Court is of the opinion that, discretion is required to be exercised to enlarge the applicant on regular bail. This Court has considered the following facts while exercising discretion in favour of the applicant :-

(i) the applicant is in jail since 08.11.2022;

(ii) the investigation is over and the charge-sheet is filed;

(iii) no past antecedent is attributed to the applicant;

(iv) though it is vehemently opposed by learned APP Mr.Soni and learned advocate Ms.Khadet contending that age of the victim is only 12 years and 05 months and such is an age when the victim was not mature enough to understand the consequence of love or getting intimate and, therefore, present applicant may not be enlarged on bail, this Court has considered the fact that present applicant is also 19 years of age and, therefore, unless it is proved that during trial that there was any criminal intention, if the present applicant is not enlarged on bail, he would amount to pre-trial conviction of the present applicant;

(v) prima facie, this seems to be love-affair since as per statement of victim herself she fell in love with applicant through social messaging application i.e. Instagram and she herself consented for eloping and travelled upto Delhi, she has also specifically stated during her medical history that whatever happened between the two was on her own volition and as such she entered into such relation.

6. In view of the aforesaid facts, without discussing the evidence in detail, this Court, prima facie, is of the opinion that, this is a fit case to exercise the discretion and enlarge the applicant on regular bail. Hence, present application is allowed and the applicant is ordered to be released on regular bail in connection with the FIR being C.R.No.11191028221186 of 2022 registered with Vejalpur Police Station, District Ahmedabad City on executing 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 he shall;

[a] not take undue advantage of liberty or misuse liberty;

[b] not act in a manner injuries to the interest of the prosecution;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave India without prior permission of the Sessions Judge concerned;

[e] furnish latest 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] mark presence before the concerned police station in the first week of every month till the trial is over;

7. The Authorities 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 issue warrant or take appropriate action in the matter. Bail bond to be executed before the learned 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, 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 applicant on bail.

8. Rule is made absolute to the aforesaid extent. Direct service is permitted.