

2023 SCC OnLine Guj 2277

In the High Court of Gujarat at Ahmedabad
(BEFORE ILESH J. VORA, J.)

Sanjaykumar Mahobatji Solanki (Thakor)

Versus

State of Gujarat

R/Criminal Misc. Application No. 20815 of 2022

Decided on July 18, 2023

Advocates who appeared in this case:

Mr. Yogesh G. Kanade(3114) for the Applicant(s) No. 1

Ms. Asmita Patel, App for the Respondent(s) No. 1

The Order of the Court was delivered by

ILESH J. VORA, J.:— Rule. Learned APP waives service of notice of Rule on behalf of respondent State. By consent, Rule is fixed forthwith.

2. The applicant, by way of this successive application filed under Section 439 of the Code of Criminal Procedure, seeks regular bail in connection with the FIR being C.R. No. 11216004220080 of 2022 registered with Dabhoda Police Station, Dist. Gandhinagar, for the offences punishable under Sections 363, 366, 376(2)(n), 376(3) and 114 of the IPC and Sections 4 and 6 of the POCSO Act.

3. As per the case of prosecution, the victim was lured by the applicant-accused no. 1 and was abducted and taken her at different places and maintained physical relationship. Pursuant to the FIR, charge-sheet came to be filed against 3 persons, for the aforesaid offences. The applicant herein was apprehended on 27.02.2022 and since then, he is behind bars. After framing the charge, the learned trial Court recorded the statement of the victim and the same is produced with the paper-book at page no. 1 of this application.

4. Mr. Yogesh Kanade, learned advocate for the applicant has submitted that, this is a case of love affair and the victim has not fully supported the case of prosecution as in the cross-examination, she has categorically denied the act of sexual relationship alleged against the applicant herein. In these circumstances, Mr. Kanade, learned advocate for the applicant submitted that, since 27.02.2022, the applicant is in jail and after completion of evidence of the victim, question does not arise to hamper with the evidence of the prosecution.

5. On the other hand, Ms. Asmita Patel, learned APP for the respondent-State vehemently opposed the plea of bail and submitted that, when the trial is going on, the Court at this stage, cannot extend

the benefit of bail to the applicant herein as earlier he had withdrawn the application and now there is no change circumstances to entertain this application. Thus, therefore, she urged that, considering the age of the victim and gravity and seriousness of the offence, no judicial discretion can be exercised in favour of the applicant.

6. Heard Mr. Yogesh Kanade, learned advocate for the applicant and Ms. Asmita Patel, learned APP for the respondent-State.

7. Having heard learned advocates appearing for the respective parties and on perusal of the material placed on record including the deposition of the victim, it appears that, she has changed her version in the cross-examination. Thus, when the trial is going on, this Court deem it not fit to discuss anything on merits of the case. Thus, without expressing any opinion on the merits of the case, this Court is of the view that the applicant has made out a case for bail.

8. 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. 11216004220080 of 2022 registered with Dabhoda Police Station, Dist. Gandhinagar, on executing a personal bond of Rs. 10,000/- (Rupees Ten thousands only), with one surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that he shall;

No.	Conditions
(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 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;

9. The Authorities will release the applicant 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 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. Rule is made absolute to the aforesaid extent. Direct service is permitted.

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