

(2020) 11 GUJ CK 0037

Gujarat High Court

Case No: R/Criminal Appeal No. 842 Of 2020

Aalabha Murubha
Odhedbha Gaad

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision: Nov. 26, 2020

Acts Referred:

- Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 - Section 3(2)(5), 3(2)(5A), 14A
- Indian Penal Code, 1860 - Section 323, 363, 366, 376(1), 376(2)(n)
- Protection Of Children From Sexual Offences Act, 2012 - Section 4, 5(L), 6, 8, 12

Hon'ble Judges: A. S. Supehia, J

Bench: Single Bench

Advocate: Aditya D Davda, Shruti Pathak

Final Decision: Allowed

Judgement

A.S. Supehia, J

1. Heard the learned advocates for the respective parties through video conferencing.

2. This appeal is filed by the appellant under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

(Atrocities Act) for regular bail in connection with FIR registered as C.R.No.I-52 of 2019 with Kalyanpur Police Station, District Devbhumi Dwarka

for the offences punishable under Sections 363, 366, 376(1), 376(2)(n) and 323 of the Indian Penal Code, 1860 and under Sections 3(2)(5), 3(2)(5-A)

of the Atrocities Act and under Sections 4, 5(L), 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3. Learned advocate for the appellant has submitted that the allegations made against the appellant are vague and he has been falsely implicated in the alleged offence. He has further submitted that the appellant has been arrested on 16.07.2019 and has been incarcerated since then. He has submitted that there is delay of six months in lodging the FIR. He has also submitted that on perusal of the statement of the victim, it clearly appears that both were in love affair.

4. 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. She has submitted that the age of the victim girl is of 15 years and 4 months at the time of incident and the minimum punishment for the offence is of 10 years under the POCSO Act. She has further submitted that in fact the prosecutrix was assaulted by the appellant-accused.

5. Learned advocates appearing on behalf of the respective parties do not press for a further reasoned order.

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

- i) The appellant is in custody since 16.07.2019;
- ii) The investigation is over and charge-sheet is filled;
- iii) That there is delay of six months in lodging the FIR;
- iv) There is a love affair between the appellant and the victim.

7. This Court has taken into consideration the law laid down by the Apex Court in the case of Sanjay Chandra v. Central Bureau of Investigation,

[2012] 1 SCC 40.

8. Having regard to the above submissions and in the facts and circumstances of the case and considering the nature and gravity of accusation made against the appellant in the FIR, this Court is of the view that discretion is required to be exercised in favour of the appellant for grant of bail and, since

there is no possibility of tampering with the evidence as charge-sheet is already submitted. Moreover, the appellant assures that he will abide by the

terms and conditions that may be imposed by the Court and shall not commit any breach.

9. Further I do not intend to go into the merits of the matters and I am persuaded to exercise my discretion in favour of the appellant. The investigation

is over and the charge-sheet has already been filed and the trial would take a considerable long period of time.

10. Hence, the present appeal is allowed. The appellant is ordered to be released on regular bail in connection with C.R.No.I-52 of 2019 with

Kalyanpur Police Station, District Devbhumi Dwarka on executing personal bond of Rs.10,000/- (Ten Thousand) with one surety of like amount to the

satisfaction of the 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 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 passport(s), 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 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 address of his 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 Trial Court;

11. The authorities will release the appellant 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.

12. 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.

13. 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.

14. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent. Registry is directed to intimate the concerned jail

authority and the concerned Sessions Court about the present order by sending a copy of this order through Fax message, email and/or any other

suitable electronic mode.

15. Learned advocate for the appellant is also permitted to send a copy of this order to the concerned jail authority and the concerned Sessions Court

through Fax message, email and/or any other suitable electronic mode.