

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 23962 of 2018**

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HARSUL S/O GAMBHIRDAN BANESINGH GADHAVI
Versus
STATE OF GUJARAT

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Appearance:

J M TALOTA(7443) for the PETITIONER(s) No. 1
MR LR PUJARI, ADDITIONAL PUBLIC PROSECUTOR(2) for the
RESPONDENT(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE A.Y. KOGJE

Date : 16/01/2019
ORAL ORDER

1. This application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 for regular bail in connection with FIR registered as **C.R. No.I-162/2018** with **Sabarmati Police Station, Ahmedabad** for the offence punishable under Sections 363, 366 and 376(2)(I)(N) of the Indian Penal Code and under Sections 3(A), 4, 5(L), 6, 7, 8, 11(6) and 12 of the POCSO Act, 2012.
2. Learned advocate appearing on behalf of the applicant submits that considering the nature of offence, the applicant may be enlarged on regular bail by imposing suitable conditions.
3. 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.

4. Learned Advocates appearing on behalf of the respective parties do not press for a further reasoned order.
5. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers. Following aspects are considered :-

- I) The First Information Report is registered on 18.11.2018 for the offence which is alleged to have taken place on 17.11.2018;
- II) The applicant is in custody since 20.11.2018;
- III) The investigation qua the applicant has concluded as the remand period is over;
- IV) The submission of learned Advocate for the applicant that the applicant is aged 24 years, unmarried and is a student whereas the prosecutrix is aged 16 years;
- V) Considering the history narrated before the Medical Officer, the element of love affair cannot be ruled out and;
- VI) Learned Additional Public Prosecutor under the instructions of the Investigating Officer is unable to bring on record any special circumstances against the applicant.

This Court has taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra v. Central Bureau of Investigation** reported in [2012] 1 SCC 40.

6. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the First Information Report, without discussing the evidence in detail, prima facie, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.
7. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with **C.R. No.I-162/2018** with **Sabarmati Police Station, Ahmedabad** on executing a personal 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 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;
 - (c) surrender passport, if any, to the lower Court within a week;
 - (d) not leave the State of Gujarat without prior permission of the Sessions Judge concerned;
 - (e) not enter the limits of Ahmedabad, till the evidence of the prosecutrix is concluded, except for marking presence, attending the trial and attending his examinations;
 - (f) mark presence before the concerned Police Station on alternate Monday of every English calendar month for a period of six months between 11.00 a.m. and 2.00 p.m.;
 - (g) 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 this Court;

8. 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.
9. 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.
10. 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.
11. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

CAROLINE

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Sd/-
(A.Y. KOGJE, J)