

IN THE 2ND ADDITIONAL SESSIONS COURT
BHARUCH AT ANKLESHWAR

CRIMINAL MISC. APPLICATION NO. 978 OF 2022

Applicant/s:

1. Mehulkumar Kalpeshbhai Machhi Patel Age 20
years Occu : Service Residing MachhiFaliya
Mandva Taluka Ankleshvar

Versus

Opponent/s:

The State of Gujarat

Appearance:

Mr.S.B.Patel : Learned Advocate for Applicant/s
Mr. J. B. Panchal : Learned APP for the State

JUDGMENT

1. The present application is filed by the Applicants-Accused seeking regular bail for the alleged commission of the offence punishable under Sections 376D, 363, 366, 114 of Indian Penal Code as well as under Sections 4, 6 and 17 of the POCSO Act and Sections 3(1)(r), 3(1)(s), 3(2)(v), 3(2)(va), 3(1)(w)(i) of the prevention of Atrocity (against Scheduled Caste and Scheduled Tribe) Act registered vide Cr. No. : 11199028220269 of 2022 before Jhagadiya Police Station.
2. Heard Learned Advocate Mr. S.B.Patel for the Applicants-Accused and Learned Additional Public Prosecutor Mr. J. B. Panchal for the Opponent-State and read the Affidavit of the Investigating Officer and Police papers.

3. Learned Advocate Mr. S.B.Patel appearing for the Applicants has made submissions on the line of the contentions made in the present application and submitted that the Applicants are innocent and have been falsely involved in the present offence and are neither directly nor indirectly involved in the offence, they will give full co-operation during investigation. Ld. advocate further submitted that age of victim is 16 years and 7 months. Applicants having no criminal history. The allegations made against the applicants cannot be proved by satisfactory and cogent evidences. The applicants are in judicial custody since 24.2.2022 The investigation is completed and the charge sheet is filed. If the applicants are kept in jail for long period then their future career will ruin. Applicants having permanent address. Hence, he prays to release the Applicants on regular bail upon suitable terms and conditions, which may be deemed just and proper to the Court, which the Applicants assure to abide. Ld. advocate has relied on the various judgments of Hon'ble High Courts. The learned advocate Mr.Patel also prays for parity considering the decision of Gujarat High Court in Criminal Misc. Application 22440 of 2022, in case of Vasava Akshaybhai Rajubhai, Wherein the Honourable Gujarat High Court had released the co accused on bail so the applicant prays for parity.
4. As regards this, Learned Additional Public Prosecutor Mr. J. B. Panchal appearing on behalf of the State has opposed the application and stated that if the Applicants are enlarged on bail then there are all likelihood of tampering with evidence and repetition of the offence, the said offence is serious in nature

and if the Accused are released on bail, than it will adversely affect to the society and a wrong message will go to the society that "*in such type of serious offence, the Court can be liberal, by enlarging the bail to the accused*". Main accused Vishal has called the other co-accused. Victim has identified the present applicants during the identity parade. Blood samples of applicant Mogal Sahir Sabbir is matched. Applicants are alleged to be involved in offence of rape. The alleged offence is serious in nature. Victim is only 17 years old. Hence, he has prayed this Court that the Applicants should not be released on bail.

5. While deciding bail application under Section 439 of Criminal Procedure Code, the following factors are required to be considered:
 - (a) Whether releasing the accused on bail is in any way forbidden by any statutory provision?
 - (b) Whether he would intimidate the witnesses or win over them for getting support to his defence and/or for abstaining from supporting the prosecution?
 - (c) Whether he would be available easily at the time of his trial and would submit to the custody if convicted and sentenced at last or would flee and would not be available?
 - (d) Whether he would tamper with the evidence?
 - (e) Whether he would commit like wise or any other offence or wrong directly or indirectly remaining behind curtain?
 - (f) Whether he would be retributive or revengeful or retaliative, i.e. whether his release will endanger safety of the persons,

viz. complainant and witness or other concerned or property?

- (g) Whether his own safety is likely to be endangered?
 - (h) Whether larger good, national interest social order, national security, public safety, and/or health are likely to be jeopardized?
 - (i) The nature and gravity of offence being shocking and alarming of barbaric and day in and day out its effect of the people or damages civilization in the society turning back to jungle law?
 - (j) Other peculiar circumstances of each case appearing on record, dictating the exercise of discretion in particular way?
6. Having considered the rival submissions of the Learned Advocates appearing for the respective parties, Police papers produced with the charge sheet and looking to the submission made by both the parties, it is found from the FIR and Affidavit of the Investigating Officer that the names of co a applicants are shown in the FIR. During the identification parade, victim has identified the applicants. The alleged offence is against the woman and very serious in nature. Main accused has called other co-accused. There is prima-facie case against all the applicants. The victim's age is about 17 years and from the FIR, it is very crystal clear that the present Applicants have played a role. So, this offence is considered as serious one and looking to the age of the victim as well as role played by the present Applicants, if discretionary powers will be utilized, than it will adversely affect to the society and a wrong message will go to the society that "*in such type of serious offence, the Court can*

be liberal, by enlarging the bail to the accused". As such, it is found from all the documents, that this is a serious offence, more particularly considering the age of the victim, about 17 years and role played by the Accused shows that they have committed an offence and prima facie case is made out against them not only that but I have also found from the Identification parade made by the Executive Magistrate on Dt.21.12.2022,Wherein the Identification parade the victim had identified the accused, It is also required to be considered that, the order passed by the Honourable Gujarat High Court is passed on dtd.20.12.2022, so this documents is new document come on record after releasing the co accused on bail, so new facts and new prima facie involving the present accused is made out and this evidence come on record which cannot be ignored and as mentioned in the affidavit that total 20 witnesses and out of which 10 Govt witnesses supported the case of prosecution and victim is also supported the case of the prosecution. So far the parity is concerned I am of the opinion that this is not a fit case for parity because the Identification parade is made by the Executive Magistrate and it is a new documents collected by the Investigating officer during his inquiry and it is made very next date where co accused is released on bail by the Honourable High Court, So subsequent event and evidence collected by the investigating officer so this is not a fit case for considering the case of parity because the reason that this incident committed by the accused is a gange rape and it is disgusting crime, As considered the FIR it is mentioned that, the accused vishal took the victim and

completely naked and he had committed the rape and there after he calling other co accused and they had also committed the rape. Considering the facts circumstances and manner which the offence is committed it is a crime against women and society and if we considered and released the accused on bail then it will be adversely affect to the society and wrong message will go to the society that in a gange rape cases accused are easily release on bail and no women will be safe in the society and people lost the fear of law. So, this is not a fit case to exercise the discretionary powers and ultimately this application requires to be rejected with the following Order:

:: O R D E R ::

- The application filed by the present Applicant: Mehulkumar Kalpeshbhai Machhi (for regular bail is hereby rejected.

Pronounced in the Open Court today on this 6th day of January 2023.

Place : Ankleshwar

Date : 06-01-2023

(VINODBHAI JETHABHAI KALOTRA)

2nd Additional Sessions Judge,
Bharuch at Ankleshwar.
(Code No.: GJ00486)