

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER CHARGESHEET) NO. 8249 of 2026**

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SAIYED BASA @ AMAN @ JAVED AMAN ABDUL KADAR
Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR PAVANKUMAR B RAJPUT(13940) for the Applicant(s) No. 1
NOTICE SERVED for the Respondent(s) No. 2
MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 10/07/2026

ORDER

Though the respondent no.2 – original complainant is duly served but remained absent.

- 1) **RULE.** Learned APP waives service of notice of Rule for the respondent - State.
- 2) By way of present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS"), the applicant is seeking regular bail in connection with FIR being **A-C.R. No.245 of 2019** registered with **Katargam Police Station, Surat City** for the offence punishable under Sections 363, 366, 376(N)(n) and 376(3) of the Indian Penal Code (for short "IPC") and under Sections 4, 5(I) and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").
- 3) Heard learned advocate appearing for the respective parties.

- 4) Learned advocate for the applicant has submitted that the applicant is innocent and is falsely arraigned as accused in the alleged offence and initially not named in the FIR. Further, the applicant and victim were in love affair and decided to eloped and she has accepted their love affair in her statement. Further, there was no any internal or external injury marks were found on the victim's body and even in her deposition she has denied about physical relation established by the applicant. Even in her medical examination the victim did not give any name of the accused. He has further submitted that charge-sheet has been filed and nothing is required to be recovered or discovered from the present applicant and even trial is in progress wherein depositions of complainant, victim and her father are already been recorded. Hence, he has requested to allow the present application.
- 5) Learned APP appearing for the respondent – State has opposed the present bail application on the ground that the offence is against State and victim at the time of offence was a minor and therefore, her consent is of no importance. Further, the applicant is aged 35 years and under the pretext of marrying the victim he kidnapped and taken her to his native place in Andhra Pradesh where they lived in a rented premises and repeatedly committed raped on the victim despite the applicant was aware about the fact that the victim is minor below the age of 15 years and took disadvantage of her tender age and no relief can be granted to the present applicant. It is further submitted that the applicant not named in the FIR is concerned as per the statement of victim, *prima facie* involvement of applicant is revealed. It is further submitted that there is no possibility of delaying the trial on behalf of the prosecution as the trial has already begun and at advance stage. If

the applicant is released on bail then the possibility of tampering with the evidence cannot be ruled out.

- 6) Having heard the learned advocates appearing for the respective parties and perusing the investigation papers, it appears that complaint is filed at the instance of respondent No.2 – original complainant for the offence under Section 363 of the IPC however, subsequently the concerned Investigating Officer submitted section addition report and section 366, 376(2)(n) and 376(3) of the IPC and sections 4, 5(I) and 6 of the POCSO Act came to be added and charge-sheet came to be filed for the offence punishable under Sections 363, 366, 376(2)(n) and 376(3) of the IPC and sections 4, 5(I) and 6 of the POCSO Act wherein it is alleged that the applicant – accused despite knowing that the victim – daughter of the complainant was minor, without the knowledge and information of the complainant, took the victim from parental guardianship of the complainant with intention to develop physical relations with the victim and thereafter developed physical relations with the victim and therefore, in this regard, the complaint is filed.
- 7) Perusing the papers, it appears that statement of victim was recorded under Section 183 of the BNSS wherein the victim has reiterated the aforesaid facts. *Prima facie*, it appears that aggravated form of sexual assault has been committed by the applicant upon the victim and therefore, sections 4 and 6 of the POCSO Act have been invoked as the applicant under the pretext of marrying the victim developed physical relations with the victim though the applicant was aware about the tender age of the victim i.e. 14 years and 6 months at the time of incident. Further, as the victim was minor at the time of incident her consent has nothing to

do and the same is irrelevant.

- 8) Considering the statement and object, the reason of enactment of POCSO Act is that several child has inalienable human right to live with dignity, grow-up and develop in an atmosphere conducive to mental and physical health, to be treated with equality and not to be discriminated. The right to protection of privacy also includes the child right. It is a constitutional guarantee and basic human right to live with dignity. Even, the directive policy of the State policy casts an obligation on the State to ensure that children are given an opportunity and facility to develop in healthy manner and in a condition of frame and dignity. Considering the aforesaid fact, to provide free fair, secure and conducive atmosphere for development of child and to protect the children from sexual exploitation with special purpose Act being produced. Once it is admitted and undisputed fact that the petitioner is major, though by taking undue advantage of tender age of victim, who is minor, she is exploited by the present applicant.
- 9) The prime consideration under the POCSO Act is victim is minor and is protected under the law of land. Once it is undisputed and admitted fact that the petitioner has taken undue advantage of the tender age of the victim and eloped with her and stayed with the victim and committed the offence, the object of the POCSO Act was not merely in furtherance of this country's commitment to international instruments, but its resolve to and attempted at creating a world as secure and as free from fear, for the most innocent and vulnerable section of its citizens, i.e., children and young adults. Behaviour - physical, verbal, and non-verbal, ranging from what discomfits a child to as horrifying as rape and physical

sexual abuse have been criminalized. Special mechanisms to provide access to the justice delivery system, and ensure speedy justice, have been devised. Yet, a society's commitment to such a cause does not cease by mere enactment of any law, but its willingness, and those governing and administering it, to create and ensure effective overall frameworks which support and strengthen its institutions. Merely any inadvertence or defect in investigation is not ground to enlarge the accused on bail. Appreciation of evidence is not permissible while deciding bail application and Court should not hold mini trial. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of ***The State of Uttar Pradesh vs. Anurudh & Anr.*** reported in **2026 INSC 47**.

- 10) Even, merely filing of charge-sheet does not mean that Court should ignore the material collected during investigation more particularly when allegations are serious in nature concerning offence under the POCSO Act, intimidation and devastating impact on the life of the victim which shock the collective conscience of the society are there. Even, considering the likelihood of tampering with the evidence and intimidation to the witnesses, in light of decision of Hon'ble Supreme Court in the case of ***State of Bihar v. Rajballav Prasad Yadav*** reported in **(2017)2 SCC 178**; ***Deepak Yadav vs. State of Uttar Pradesh and Another*** reported in **(2022)8 SCC 559**; ***Bhagwan Singh vs. Dilip Kumar @ Deepu*** reported in **(2023)13 SCC 549** and ***X vs. State of Maharashtra*** reported in **2023 (2) SCR 1112** and considering the stringent provisions of POCSO Act and gravity of offence and severity of punishment, in such offence, no case is made out to exercise the discretion.

- 11) Further, present application is filed after filing of charge-sheet and the allegations against the present applicant are under Sections 363, 366, 376(2)(n) and 376(3) of the IPC and sections 4, 5(I) and 6 of the POCSO Act. Learned advocate for the applicant has requested for bail on the ground that charge-sheet is already filed however, it is needless to say that merely charge-sheet is filed is not a ground to release the applicant on bail. In this regard reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Virupakshappa Gouda vs. State of Karnataka** reported in **(2017) 5 SCC 406**, wherein it is held as under :

"13. Needless to say, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution. On the contrary, filing of the charge-sheet establishes that after due investigation the investigating agency, having found materials, has placed the charge-sheet for trial of the accused persons."

In view of the above, after filing of the charge-sheet, allegations made by the prosecution have not lessen in any manner. Herein, the alleged offence is against a minor victim and proceedings under the POCSO Act is governed by the presumption under Sections 29 and 30 of the POCSO Act. Therefore also, no case is made out for exercise of discretion under Section 483 of the BNSS.

- 12) One more aspect is also required to be considered, so far concept of the bail is concerned, purpose of the bail is not a punitive but a

preventive. While granting bail, the Court has to take care the availability of the accused at the time of trial and second important aspect is that possibility of the tampering with an evidence of the prosecution. Further, while granting bail, the Court has to satisfy itself about the interest of prosecution. One of the criteria which is required to be considered while considering bail is interest of prosecution witnesses. This Court is of the considered opinion that if the present accused is enlarged on bail, the possibility of accused misusing his liberty and tampering with evidence of prosecution and flight risk cannot be ruled out. At this stage, it would be apposite to refer to the decision of the Hon'ble Supreme Court in the case of **Ash Mohammad vs. Shiv Raj Singh alias Lalla Babu and Another** reported in **(2012)9 SCC 446** wherein the Hon'ble Apex Court has held that the concept of liberty is not in the realm of absolutism but is a restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardized. In the said decision, the Hon'ble Supreme Court relying on the decision of Hon'ble Supreme Court in the case of **Prasanta Kumar Sarkar vs. Ashis Chatterjee** reported in **(2010) 14 SCC 496** has observed in para 30 as under:

"30. We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy. There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would

arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed. They are to be weighed in the scale of collective cry and desire. The societal concern has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter we are inclined to think that the social concern in the case at hand deserves to be given priority over lifting the restriction of liberty of the accused."

- 13) So far as contention on behalf of the applicant that applicant is behind the bars since 27.08.2025 and conclusion of trial will take considerable time is concerned, it is reported that trial is at advanced stage and therefore, apprehension on the part of the applicant that trial will take long time to conclude is a misconception. Second argument so far as delay in trial as canvassed by the learned advocate for the applicant is concerned, trial is at the verge of completion and most of the witnesses are examined and hence, appreciation of evidence while considering bail application is not permissible and once trial is in progress and witnesses are going to be examined, if the applicant is released on bail then possibility of tampering with the evidence cannot be ruled out. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of ***X vs. State of Rajasthan*** reported in **2024 INSC 909**.
- 14) For the foregoing reasons, this Court is of view that present is not a fit case to exercise discretion under Section 483 of the BNSS in favour of the applicant. Accordingly, present application does not deserve any consideration and is hereby **dismissed**. Rule is hereby discharged. However, the learned trial Court is directed to **expedite the trial, preferably within SIX WEEKS**, as the applicant is an under-trial prisoner for which the applicant shall also cooperate.

- 15) It is made clear that the observations made in the present order are tentative in nature and the learned trial Court shall decide the case of the applicant independently on its own merits without being influenced by the observations made in the present order.

ANKIT JANSARI

(HASMUKH D. SUTHAR,J)