

for a period of six months or till the conclusion of the trial, whichever is earlier;

(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 this Court;

12. 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.

13. 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.

14. 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 appellant on bail.

15. The appeal is disposed in the aforesaid terms. Direct Service is permitted.

Result:- Bail granted.

**ABC 2019 (III) 104 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT**

(A. P. Thaker, J.)

R/Criminal Appeal No 320 of 2019

Decided on 10 June 2019

RAJESH @ RAJU ARJANBHAI CHAUHAN - Appellant(s).

Versus

STATE OF GUJARAT & ANR - Respondent(s).

Law Covered:- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Section 14(A) & 3(2)(v), 3(1) (w) – IPC – 376 & 506(2) – Regular bail – Love affair between the victim & the accused – victim has written love letters to the appellant – young age of accused – charge-sheet filed – no likelihood that the appellant will not be available during the course of trial – Bail granted. (Para 9)

Held:- On perusal of the material placed on record and the papers made available by the prosecution on record and the papers annexed with the appeal, it appears that there is love affair between the victim and the accused and the victim has written love letters to the appellant. It also appears from the record that the appellant is in jail since 28.03.2018 and he is

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a 22 years of age. It also appears that as the charge-sheet has been filed, there is no likelihood that the appellant will not be available during the course of trial. Under these circumstances, without discussing the evidence in detail, prima facie, this Court is of the considered opinion that the discretion under Section 439 of the Criminal Procedure Code is required to be exercised in this case by imposing suitable conditions. (Para-9)

b **Counsel:-** For Appellant(s): Ms. Jayshree C Bhatt, Adv.
For Respondent(S): Ms. Shivangi M Rana, Ms. moxa Thakkar, Adv.

Cases Referred:-

c *Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40, (Para-8)*

ORDER

d A. P. THAKER, J.: - 1. This is an appeal filed under Section 14(A) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter be referred to as "the Atrocity Act" for short) at the instance of the appellant - original accused for bail in connection with the ***FIR being I - C.R.No.10/2018 registered with Paliyad Police Station, District: Botad*** for the offences punishable under Sections 376, 506(2) of the Indian Penal Code, Section 3(2)(v), 3(1) (w) of the Atrocity Act and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act (hereinafter be referred to as "the POCSO Act").

e 2. In pursuant to the aforesaid FIR, the accused has been arrested on 28.03.2018 and after necessary investigation the charge-sheet has been filed.

f 3. The short facts of the prosecution case are that the victim was 16 years of age on the day of occurrence and the accused has committed rape on her due to which she got pregnant. That victim was belonging to the schedule caste. That her mother has lodged the FIR after six months of the incident and has stated that as her daughter was threatened by the accused, she could not be narrated anything her parents and as she was found to be pregnant, ultimately, she has narrated the entire story.

g 3.1 It is the contention of the accused that he is innocent and he has not committed any act and the victim has written love letters to him. It is also contended by the appellant that the victim and the present accused were in love since last 2-3 years and the victim has also written love letters to him and she has threatened her to take with him. It is contended by the appellant that since the chargesheet has been filed, there is no question of tempering with the evidence and the accused is 22 years of age and he has no past any criminal antecedent. The appellant has prayed to allow the present appeal.

h 3.2 The appellant has contended that he has preferred Criminal Misc. Application No.1309 of 2018 before the District and Sessions Court,

Bhavnagar which came to be rejected by the learned 4th Additional Sessions Judge, Bhavnagar vide order dated 21.06.2018.

4. The respondent No.2 - original complainant has filed affidavit in reply opposing the present appeal and has stated that there is prima facie material against the present accused for the commission of the crime and the charge-sheet has been filed. She has stated that the offence is serious one and the appellant has committed the alleged offence of rape on the minor. It is stated that if the appellant is released on bail then he would misuse the liberty. On all these grounds, it is prayed to dismiss the present appeal.

5. Heard Ms. Jayshree Bhatt, learned advocate for the appellant and Ms. Moxa Thakker, learned Additional Public Prosecutor for respondent No.1 - State. Nobody has appeared for respondent No.2. Perused the papers made available in record and the papers annexed with the memo of appeal.

6. Ms. Jayshree Bhatt, learned advocate for the appellant has submitted the same facts which are narrated in the appeal memo and has prayed to allow the present appeal.

7. Ms. Moxa Thakker, learned Additional Public Prosecutor for respondent No.1 - State have vehemently opposed the appeal and has stated that at the time of incident, the victim was 16 years of age and, therefore, there is no question of any consent. She has prayed to dismiss the appeal.

8. This Court has taken into consideration the law laid down by the Apex Court in the case of *Sanjay Chandra Vs. Central Bureau of Investigation* reported in (2012) 1 SCC 40.

9. On perusal of the material placed on record and the papers made available by the prosecution on record and the papers annexed with the appeal, it appears that there is love affair between the victim and the accused and the victim has written love letters to the appellant. It also appears from the record that the appellant is in jail since 28.03.2018 and he is 22 years of age. It also appears that as the charge-sheet has been filed, there is no likelihood that the appellant will not be available during the course of trial. Under these circumstances, without discussing the evidence in detail, prima facie, this Court is of the considered opinion that the discretion under Section 439 of the Criminal Procedure Code is required to be exercised in this case by imposing suitable conditions.

10. Hence, the present appeal is allowed. The impugned order dated 21.06.2018 passed by the learned 4th Additional Sessions Judge, Bhavnagar in Criminal Misc. Application No.1309 of 2018 is hereby quashed and set aside. The appellant is ordered to be released on regular bail in connection with the *FIR I - C.R.No.10/2018 registered with Paliyad Police Station, District: Botad* 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;
- a (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;
- b (e) mark presence before the concerned Police Station on alternate Monday of every English calendar month between 11.00 a.m. and 2.00 p.m., for a period of six months or till the conclusion of the trial, whichever is earlier;
- (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
- c not change the residence without prior permission of this Court;
- (g) not enter the village where the victim is residing till the final decision of the Sessions Case.
- d 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.
- e 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.
- f 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 appellants on bail.
14. The appeal is allowed in the aforesaid terms. Direct Service is permitted.

Result:- Appeal Allowed.

**ABC 2019 (III) 107 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT
(G.R.Udhwani, J.)**

R/Criminal Misc. Application No. 9744 of 2019
Decided on 28 June 2019

h **VANRAJSINH HIRABHAI CHAVADA** - Applicant(s).

Versus

STATE OF GUJARAT - Respondent(s).

Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 439 – Successive bail application – entertaining – in a case