

ABC 2019 (III) 280 GUJ  
ACQUITTAL & BAIL CASES  
HIGH COURT OF GUJARAT

(Umesh A. Trivedi, J.)  
R/Criminal Appeal No 1495 of 2019  
Decided on 22 August 2019

VASIM @ SHAKIL HANIFBHAI DIVAN - Appellant(s).

Versus

STATE OF GUJARAT - Respondent(s).

**Law Covered:-** Code of Criminal Procedure, 1973 – Section 439 – Regular Bail – Indian Penal Code, 1860 – Sections 363, 366, 506(2) – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Sections 14(a), 3(2)(v), 3(1)(w)(ii) – Prevention of Children from Sexual Offences (POCSO) Act, 2012 – Section 8 – Rejection of bail application by Sessions case filed on the ground of filing of charge-sheet – Appellant in jail for more than five months – Investigation concluded & charge sheet is filed – Age of accused about 20 years – Victim & the accused known to each other – Offence u/s 376 neither alleged nor made out also confirmed by medical examination of the – from the victim it has come out that the appellant is known to her & and she had gone voluntarily – maximum sentence considered – regular bail granted. (Para 5)

**Held:-** This Court has considered the following aspects :

- I. appellant is in jail since more than five months;
- II. the investigation is concluded and charge sheet is filed;
- III. the accused is aged about 20 years.
- IV. It is coming out from the record, more particularly, from the statement of the victim that the appellant is known to her.
- V. no offence under Section 376 is made out rather it is not alleged. Even the medical examination of the victim also confirms the same;
- VI. though the First Information Report filed by the victim discloses an offence under Sections 363 and 366 of IPC, her additional statement dated 07.03.2019 i.e. next day, she has come out with the story that the appellant is known to her; and she had gone voluntarily.
- VII. so far as maximum punishment, even if all the offences are considered, is of 10 years; (Para-5)

**Counsel:-** For Appellant(s): Mr Apurva R Kapadia, Adv.

a For Respondent(s): Mr P B Khambholja, Ms Jirga Jhaveri, Advs.

### **ORDER**

b **UMESH A. TRIVEDI, J.:** - 1. By way of this appeal under Section 14 (A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act'), the appellant is challenging the order passed by the learned Additional Sessions Judge, Narmada at Rajpipla dated 11.07.2019 whereby, the regular bail application of the appellant, after submission of charge sheet has come to be rejected in connection with an offence registered at c C.R.No.I-36 of 2019 with Rajpipla Police Station, Narmada for the alleged offence punishable under Sections 363, 366 and 506(2) of the Indian Penal Code as also under Sections 3(2) (v) and 3(1) (w) (ii) of the Act and also under Section 8 of the Prevention of Children From d Sexual Offences Act, 2012.

e 2. Heard Mr. Apurva R. Kapadia, learned advocate for the appellant. He has submitted that considering the papers of investigation, it is clear that no offence under Section 376 of IPC is made out. As such, there is no complaint for the same or any statement contained in the papers of charge sheet. He has further submitted that victim as also the appellants are known to each other and having relation since sometimes. He has further submitted that considering her statement dated 07.03.2019, it is clear that she is f knowing the appellant very well and out of her own volition, she had joined him at different places. He has submitted that at one place, she has stated in a statement dated 07.03.2019 that forcibly she was attempted to be kidnapped. However, he has requested that since charge sheet is filed, the appellant be released on bail.

g 3. As against that, Ms. Jirga Jhaveri, learned Additional Public Prosecutor as also Mr. P. B. Khambholja, learned advocate for respondent No.2 herein submitted that since the victim is aged about less than 15 years, volition to join the appellant at the places as secluded is of h no consequence. They have further submitted that, at any rate, an offence under Sections 363 and 366 of the Indian Penal Code is made out and therefore, the appellant be refused to release on bail.

4. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration

the facts of the case, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the appellant on regular bail. a

5. This Court has considered the following aspects :

I. appellant is in jail since more than five months;

II. the investigation is concluded and charge sheet is filed; b

III. the accused is aged about 20 years.

IV. It is coming out from the record, more particularly, from the statement of the victim that the appellant is known to her. c

V. no offence under Section 376 is made out rather it is not alleged. Even the medical examination of the victim also confirms the same;

VI. though the First Information Report filed by the victim discloses an offence under Sections 363 and 366 of IPC, her additional statement dated 07.03.2019 i.e. next day, she has come out with the story that the appellant is known to her; and she had gone voluntarily. d

VII. so far as maximum punishment, even if all the offences are considered, is of 10 years; e

6. In view of the aforesaid facts and circumstances and submissions canvassed by the learned advocate for the appellant, I am inclined to consider the regular bail application of the appellant. Hence, the judgment and order dated 11.07.2019 passed by the learned Additional Sessions Judge, Narmada at Rajpipla in Criminal Misc. Application No.188 of 2019 is hereby quashed and set aside and the appellant is ordered to be released on regular bail in connection with offence registered at C.R.No.I-36 of 2019 with Rajpipla Police Station, Narmada, on his executing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with the surety of the like amount to the satisfaction of the Trial Court and subject to the conditions that he shall; f

[a] not take undue advantage of liberty or misuse liberty; g

[b] not act in a manner injurious to the interest of the prosecution; h

[c] surrender passport, if any, to the lower court within a week;

[d] not leave India without prior permission of the Sessions Judge concerned;

a

[e] furnish the present address of residence to the I.O. 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;

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7. 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. 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. 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.

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8. Accordingly, this appeal is allowed to the aforesaid extent. Direct service is permitted.

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**Result:-** Bail granted.

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ABC 2019 (III) 283 GUJ  
ACQUITTAL & BAIL CASES  
HIGH COURT OF GUJARAT

(A.Y. Kogje, J.)

R/Special Criminal Application No 3249 of 2019

Decided on 29 August 2019

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***RUKHIBEN W/O RAJESHBHAI RAMJIBHAI KOLI- Applicant(s).***

*Versus*

***STATE OF GUJARAT***

***- Respondent(s).***

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***Law Covered:- (A) Constitution of India – Articles 21 & 226 – Bombay Police Act – Section 56 & 59 – Order of externment from many districts – No reason given either in the show cause notice or in the impugned order – Held, the order discloses nonapplication of mind by the externing authority – the reason should be shown in the notice preceding the order as well as in the order – Order quashed. (Para 5)***

October & November 2019