

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION NO. 537 of 2022**

MINOR MOHIT SHANKARBHAAI VAGHELA THROUGH TEJAL
SHANKARBHAI VAGHELA

Versus
STATE OF GUJARAT

Appearance:

MR MB RANA(2760) for the Applicant(s) No. 1
MR. MITESH AMIN, PUBLIC PROSECUTOR WITH MS.MOXA THAKKAR,
APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 27/05/2022

ORAL ORDER

1. Rule. Learned APP waives service of notice of rule for and on behalf of respondent-State.
2. By way of preferring this Criminal Revision Application under Section 102 of Juvenile Justice Act, 2015, applicant has prayed for following relief:

“(A) Be pleased to quash and set aside the order dated 20.05.2022 passed in Criminal Appeal No.140/2022 passed by Ld. City Civil & Sessions Court, Ahmedabad & order dated 04/05/2022 passed by Juvenile Justice Board and further be pleased to enlarge the applicant on bail in exercise of powers U/S 102 of Juvenile Justice Act, 2015 by granting the regular bail in connection with the F.I.R. being PART-A-11191066220496/2022 dated 22/04/2022 for the offence punishable U/S. 377, 323, 506(1) of Indian Penal Code & U/S. 3(A), 4 & 18 of Protection of Children from Sexual Offences Act, 2012, registered with VASNA POLICE STATION, AHMEDABAD CITY on such terms and conditions as may be imposed by this Hon'ble Court.”

3. Heard learned advocate appearing for the applicant and learned APP appearing for the respondent-State.

4. Learned advocate appearing for the applicant submits that applicant is aged about 16 years and 8 months, innocent and falsely implicated as an accused in the present offence. That applicant is residing with her widow mother and shall opt his further study in the commencing academic year. That applicant has no criminal antecedents. Hence, it is requested by learned advocate for the applicant to allow present applicant.

5. Learned APP appearing for the respondent-State has strongly objected the submissions made by learned advocate for the applicant and requested to dismiss the present application.

6. Having heard learned advocate for the applicant and learned APP appearing for the respondent-State, it appears from the FIR dated 22.04.2022 that on 21.04.2022, applicant-juvenile accused had taken minor son of the complainant aged about 13 years to the terrace of Block No.C of his flat forcibly while playing with his friends and had done sodomy (unnatural sex) with the minor son of the complainant at about 9.00 p.m. It further

appears that applicant-juvenile accused had also threatened to kill minor son, if the incident of sodomy (unnatural sex) is disclosed to anyone. Hence, present FIR is lodged. It further appears that applicant-juvenile accused had been arrested on 22.04.2022 and sent to the Children Observation Home @ Khanpur and is in observation home since 21.04.2022.

7. Here, this Court would like to refer Section 12 of the Juvenile Justice (Care and Protection) of Children Act, 2015 which provides as under:

“(1) When any person, who is apparently a child and is alleged to have committed a bailable or non bailable offence, is apprehended or detained by the police or appears or brought before a Board, Such Person shall, notwithstanding anything contained in the code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any person. Provided that such person shall not be released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person’s release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.”

8. From the record before this Court and submissions made by learned advocate appearing for the applicant and learned APP appearing for the respondent-State as well as considering

the age of the present applicant at 16 years and 8 months, prayer made by the present applicant requires consideration.

9. Accordingly, present application is hereby **allowed**. The impugned judgment and order dated 20.05.2022 passed in Criminal Appeal No.140/2022 passed by Ld. City Civil & Sessions Court, Ahmedabad & order dated 04/05/2022 passed by Juvenile Justice Board are hereby quashed and set aside.

10. The applicant is ordered to be released on regular bail in connection with an FIR being PART-A- 11191066220496/2022 dated 22/04/2022 for the offence punishable U/S. 377, 323, 506(1) of Indian Penal Code & U/S. 3(A), 4 & 18 of Protection of Children from Sexual Offences Act, 2012, registered with Vasna Police Station, Ahmedabad City subject to the conditions that the applicant 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] *furnish latest and permanent address of 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 the learned Sessions Court concerned;

[f] not enter into the society i.e. Swatantra Senani Flat, Near Rajwadu Hotel, Jivrajpark, Vasna, Ahmedabad till trial is over;

11. 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. Bail bond to be executed before the learned 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, learned 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.

12. Rule is made absolute to the aforesaid extent.

13. This order be communicated to the applicant through concerned Authorities by the Registry as well as learned Sessions Court concerned.

(SAMIR J. DAVE,J)

SUYASH