

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 18985 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE SAMIR J. DAVE****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

NIHAR RANJITBHAI BARAD

Versus

STATE OF GUJARAT

Appearance:

MR AJ YAGNIK(1372) for the Applicant(s) No. 1

MR PARAM R BUCH(5625) for the Respondent(s) No. 2

MS C. M. SHAH, APP for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE SAMIR J. DAVE**Date : 30/11/2022****ORAL JUDGMENT**

1. The applicant, by way of this application filed under Section 439 of the Code of Criminal Procedure, seeks regular bail in connection with the FIR being C.R. No.11186001220465 of 2022 registered with Girgadhda Police Station, Gir-

Somnath, for the offences punishable under Section 354A of IPC and under sections 10 and 18 of POCSO Act.

2. Heard learned Mr. A. J. Yagnik for the applicant and Ms. C. M. Shah, learned APP assisted by learned Advocate Mr. Param Buch for the respondents.

3. Brief facts leading to filing of present application are that:

3.1 That on 08.07.2022 at around 10:30 am in the morning the daughter of complainant went to school and when she came back home in the evening and started crying and informed her mother that she will not attend the school because today, when she was alone in the classroom during recess time, one of her teachers i.e. accused- Nihar Barad asked her and her classmate viz. Vidhya to decorate the school. Thereafter, the accused asked Vidhya to go outside for some work and took out a knife and held the victim and moved his hands inappropriately on private parts of the victim and thereafter the victim ran away from the room. On the next day morning, the informant went to the school to make such complaint to the principal of the school, wherein they found that the accused involves in such kind of molestation with

other girls also. Therefore, the FIR came to be lodged with Girgadhada Police Station for the commission of aforesaid offences.

4. Learned advocate for the applicant submitted that the applicant is absolutely innocent and has not committed any of offence as alleged or otherwise and the applicant is falsely implicated in the present FIR. He further submitted that the allegations made in the First Information Report are incorrect and the FIR was lodged after delay of 13 days. He also submitted that the FIR is nothing but an abuse of process of law which is filed for the motive of extracting money from the applicant. He also submitted that the allegations of the FIR are concocted, untrue and alleged only to disrepute the applicant. He further submitted that even the police authorities have not received any affirmative evidences in the charge-sheet like FSL report. The Investigating Officer did not seize clothes of victim as well as accused also and thus, the police authority only on the basis of statement of complainant has registered the FIR without carrying out any preliminary inquiry into the matter. He submitted that there is a huge contradiction

between the statements of the complainant, victim herself and Vidhyaben, who is one of the classmate of victim and teacher Bharatbhai Umiyashankar. He also submitted that Principal Shantilal Ranabhai Nandoda very specifically stated in their statement that accused Nihar is working since last 4 years in their school, there is no written and oral complaint received against accused regarding such kind of misbehavior and misconduct. He also submitted that the police have already filed the charge-sheet and there is no medical evidence to prove that the victims subjected to sexual assault. Therefore, there is no case made out against the applicant under section 354A of the IPC and hence, he has requested to release the applicant on bail.

5. Opposing the bail application, learned APP for the State contended that there is sufficient evidence against the applicant to prove his involvement in the alleged offence. She strongly opposes the bail application looking to the nature and gravity of the offence. In such circumstances, considering the seriousness of the offence and manner in which he executed the alleged offence, no case is made out for exercising discretion in favour of the applicant.

6. It appears from the FIR as well as the charge-sheet papers that the daughter of complainant went to school and when she came back home in the evening and started crying and informed her mother that she will not attend the school because today, when she was alone in the classroom during recess time, one of her teachers i.e. accused- Nihar Barad asked her and her classmate viz. Vidhya to decorate the school. Thereafter, the accused asked Vidhya to go outside for some work and took out a knife and held the victim and moved his hands inappropriately on private parts of the victim and thereafter the victim ran away from the room. On the next day morning, the informant went to the school to make such complaint to the principal of the school, wherein they found that the accused involves in such kind of molestation with other girls also.

7. In the case of **Eera Vs. State (NCT of Delhi), (2017) 15 SCC 133**, the Hon'ble Apex Court has observed on the Statement and Objects and Reasons of POCSO Act in para 20 as under:

"20. The purpose of referring to the Statement of Objects and Reasons and the Preamble of the Pocso Act is to appreciate that the very purpose of bringing a legislation of

the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the Preamble, it is manifest that it recognizes the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and well-being are regarded as being of paramount importance at every stage to ensure the healthy physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The Statement of Objects and Reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing child friendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the POCSO Act."

8. As it can be seen from the Statement of objects and reasons of the POCSO Act since the sexual offences against children were not adequately addressed by the existing laws and a large number of such offences were neither specifically provided for nor were they adequately penalised, the POCSO Act has been enacted to protect the children from the offences of sexual assault, sexual harassment and pornography and to provide for establishment of special

courts for trial of such offences.

9. Keeping in mind the aforesaid objects and to achieve what has been provided under Articles 15 and 39 of the Constitution to protect children from the offences of sexual assault, sexual harassment, the POCSO Act, 2012 has been enacted. Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual assault, sexual harassment on the children have to be dealt with in a stringent manner and no leniency should be shown to a person who has committed the offence under the POCSO Act. By awarding a suitable punishment commensurate with the act of sexual assault, sexual harassment, a message must be conveyed to the society at large that, if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them. Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure.

10. It is to be noted that children are precious human resources of our country; they are the country's future. The hope of tomorrow rests on them. But unfortunately, in our country, a girl child is in a very vulnerable position. There are different modes of her exploitation, including sexual assault and/or sexual abuse. The exploitation of children in such a manner is a crime against humanity and the society. Therefore, the children and more particularly the girl child deserve full protection and need greater care and protection whether in the urban or rural areas. Children need special care and protection and, in such cases, responsibility on the shoulders of the Courts is more onerous so as to provide proper legal protection to these children. A minor who is subjected to sexual abuse needs to be protected even more than a major victim because a major victim being an adult may still be able to withstand the social rationalization and mental harassment meted out by society, but a minor victim will find it difficult to do so. Most crimes against minor victims are not even reported as very often, the perpetrator of the crime is a member of the family of the victim or a close friend. Therefore, the child needs extra protection.

Therefore, no leniency can be shown to an accused who has committed the offences under the POCSO Act, 2012 and particularly when the same is proved by adequate evidence before a court of law.

11. In the present case it is to be noted that the victim was a child of 12 years. The accused is not a layman, but a teacher. The only career that influences other professions is teaching. It has the power to influence young people's future for the benefit of future generations. The teacher is expected to act a protector. Such heinous acts by the accused would cast a lifelong psychological and emotional impact on the victim. The accused has indulged a child for a tender age of 12 years and left a permanent scar on her life. Crimes like this by a person of trust, change the perception of a child to look forward towards life in a positive way. Therefore, the accused deserves no leniency. The victim was barely a 12 years girl. The accused – appellant is a teacher. The accused instead of showing fatherly love, affection and protection to the child against the evils of the society, rather made her the victim of lust. It is a case where trust has been betrayed and social values are impaired. Therefore, the accused as such

does not deserve any sympathy and/or any leniency.

12. It is also beneficial to refer to judgment of the Hon'ble Supreme Court in case of **The State of Kerala vs. Mahesh**, wherein the Hon'ble Supreme Court in para No.17 has observed as under:

17. In **Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496**, the Supreme Court laid down the parameters for granting or refusing the grant of bail which are as under:

- i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- ii. nature and gravity of the accusation;
- iii. severity of the punishment in the event of conviction;
- iv. Danger of the accused absconding or fleeing, if released on bail;
- v. character, behavior, means, position and standing of the accused;
- vi. Likelihood of the offence being repeated;
- vii. Reasonable apprehension of the witnesses being influenced; and
- viii. Danger, of course, of justice being thwarted by grant of bail."

13. Before parting, it is to be noted that learned Advocate Mr. Param Buch appearing for the original- complainant stated at the bar that matter is amicably settled between the

parties and so he has no objection if the the applicant-accused is released on bail. However, this Court is of the opinion that such practice is unwarranted when such a serious and heinous crime is committed and also it amounts to hampering/ tampering with the witness or evidence by the accused. It is surprising that such a heinous crime, which affects the entire society and the relation between 'Guru' and 'Disciples' should be viewed very strictly.

14. In that view of the matter, it is very important to note here the very well-known shloka of Guru- Teacher as under:

***Shloka: Guru Brahma Gurur Vishnu
 Guru Devo Maheshwaraha
 Guru Saakshat Para Brahma
 Tasmai Sree Gurave Namaha***

Meaning: Guru is verily the representative of Brahma, Vishnu and Shiva. He creates, sustains knowledge and destroys the weeds of ignorance. I salute such a Guru.

15. For the foregoing reasons and from the facts and circumstances of the case, it appears that the prosecution has clearly established the prima facie case against the present applicant and thus, this Court is not inclined to

exercise the powers vested under section 439 of Code of Criminal Procedure Code for releasing the present applicant on bail.

16. Accordingly, present application stands rejected. Rule is discharged.

MEHUL B. TUVAR

Sd/-
(SAMIR J. DAVE,J)

