

(2022) 01 GUJ CK 0045

In the Gujarat High Court

Case No : R/Criminal Appeal No. 1542, 1739 Of 2021

Darshan Dineshbhai Patoliya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 04-01-2022

Acts Referred:

Indian Penal Code, 1860 — Section 114, 143, 147, 148, 149, 307, 323, 324, 326, 504, 506(2)

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)?, 3(1)(S), 3(1) (ZA)C, 3(2)(V), 3(2)(VA), 14A

Code Of Criminal Procedure, 1973 — Section 439

Gujarat Police Act, 1951 — Section 135

Citation : (2022) 01 GUJ CK 0045

Hon'ble Judges : B.N. Karia, J

Bench : Single Bench

Advocate : Ashish M Dagli, D H Kanthariya, Hardik Soni

Final Decision : Allowed

Judgement

B.N. Karia, J

1. As both the criminal appeals are from the common FIR registered against the present appellants and the order dated 13.08.2021 passed by the

learned Special Judge (Atrocity), Dhari in Criminal Misc. Application No.106 of 2021 as well as order dated 26.08.2021 passed by the learned Second

Additional Sessions Judge, Dhari in Criminal Misc. Application No.107 of 2021, two different criminal appeals are preferred by the present appellants

arising from the offence registered with Bagasara Police Station, Amreli being C.R.No.11193009210389 of 2021. For the sake of convenience, these

criminal appeals are decided by passing common order, as requested by learned advocates for the respective parties.

2. The appellants preferred Criminal Misc. Application No.106 of 2021 before learned Special Judge (Atrocity), Dhari as well as Criminal Misc.

Application No.107 of 2021 before learned Second Additional Sessions Judge, Dhari u/s. 439 of the Code of Criminal Procedure, 1973 requesting to

enlarge the appellants on regular bail on account of offence being registered vide C.R.No.11193009210389 of 2021 with Bagasara Police Station,

Amreli for the offence punishable under Sections 307, 326, 504, 143, 147, 148 and 149 of the Indian Penal Code and under Sections 3(1)(R), 3(1)(S),

3(1) (ZA)C, 3(2)(V) and 3(2)(V-A) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocity) Act, 1989 (for short "the Atrocities Act") as

well as u/s. 135 of Gujarat Police Act wherein, the learned Courts-below rejected the said applications on 26.08.2021 and 13.08.2021.

3. Feeling aggrieved by the said order, the appellants preferred present appeal u/s 14A of the Atrocities Act.

4. Heard learned advocate for the appellants, learned advocate for respondent no.2-original complainant and learned APP for the respondent-State.

5. Learned advocate for the appellants has submitted that there is no weapon with the appellants nor anything is recovered or discovered from them.

It is further submitted that appellants are falsely implicated and have not committed any offence as alleged and now investigation is over and

chargesheet is filed, and therefore, further detention of the appellants may not be warranted. It is further submitted that theory of caught hold by the

appellants is also not found to be substantiated on the other evidence on record and neither injuries were caused by the appellants nor appellants were

having any weapon. Hence, it was requested by learned advocate for the appellants to quash and set aside the impugned judgment and orders passed

by learned Courts-below and release the appellants on bail.

6. Learned APP for the respondent-State as well as learned advocate for respondent no.2-original complainant have strongly objected the arguments

advanced by learned advocate for the appellants and submitted that in the FIR, it is clearly stated that on 18.06.2021, at around 06:30 p.m.,

complainant along with his relatives went to the temple, at that time, one person viz. Vitthal and the present appellants started altercation and

complainant was not allowed to offer prayer/blessing and abusive words were used against his caste. It is further submitted that however, the

complainant requested not to use abusive words, Vitthal has taken out knife and present appellants have caught hold and injuries were caused to the

complainant. That injured was thereafter taken to Bagasara Primary Hospital and for further treatment, he was taken to Civil Hospital, Amreli and

thereafter, Civil Hospital at Rajkot. Serious injuries were caused to the complainant and ten stitches were applied, and thereafter, FIR was filed. It is

further submitted that from the chargesheet papers, sufficient evidence is available against the present appellants to involve them in the offence. It is

further submitted that the names of the present appellants are disclosed in the FIR itself from the beginning by the complainant. It is further submitted

that the Trial Court has committed no error in refusing to allow the bail applications preferred by the present appellants. It is further submitted that at

the time of incident, appellants have given abusive words and caught hold at the time when accused no.1 viz. Nilkhanth Rafaliya has inflicted three

knife blows on the right shoulder of the complainant. It is further submitted that there is common intention to commit offence and they wanted to kill

the complainant. It is further submitted that other three accused persons have given first and kick blows to the complainant and appellants have

committed serious offence and therefore, they may not be enlarged on regular bail. Ultimately, it was requested by learned advocate for respondent

no.2 as well as learned APP for the respondent-State to dismiss both the appeals.

7. Having considered the facts of the case, submissions made by learned advocate for the appellants as well as learned advocate for respondent no.2-

original complainant and learned APP for the respondent-State and police papers produced on record, it appears that on 14.06.2021, the complainant

filed this complaint against three persons by name including the present appellants as they were shown as accused nos.2 and 3 respectively. In

Column No.4 of the complaint, three persons were shown of Patel Community of Village Munjiyasa. As per the allegations made in the complaint,

complainant was prevented to enter in the temple by the present appellants and certain abusive words were used by them. Further, allegations were

made against the present appellants of caught hold the complainant. Accused no.1-Nilkhanth Rafaliya gave knife blows on the right shoulder of the

complainant. Fist and kicks blows were given by three accused persons and three other persons of Patel Community and they have used abusive

words and intimidated the complainant. This complaint was lodged on 14.06.2021 at about 18:30 p.m. From the record, it appears that before registering the complaint against the present appellants, dying declaration of the injured person was recorded by the Executive Magistrate at about 05:00 a.m. on 14.06.2021, wherein the complainant has stated that when he was sitting out of the temple, 7 to 8 persons of Patel Community came there and intimidated him. The complainant was prevented to enter in the temple and thereafter, some hot discussions were made. Out of them, one unknown person gave knife blows on his right shoulder, and thereafter, they have absconded. Thereafter, he was taken to Bagasara Hospital in the ambulance and then shifted to Amreli and then, at Rajkot. It is nowhere stated in the dying declaration given by the original complainant that the present appellants had called him or caught him. From the chargesheet papers also, it is nowhere found that any injury was caused by present appellants or any weapons were in the hands of the present appellants. There is contrary story of the prosecution from the dying declaration recorded by the Executive Magistrate on 14.06.2021 and the complaint given by the respondent no.2. Further, it appears that the accused no.1 has also lodged a complaint against Sagarbhai Rameshbhai Rathod, who is the complainant in the alleged FIR against the present appellants. Accused no.1 has also registered the complaint on the very same day i.e. on 14.06.2021 under Sections 323, 324, 504, 506(2) and 114 of the Indian Penal Code against one unknown person, Rameshbhai Rathod, Ravibhai Rathod and Sagarbhai Rameshbhai Rathod, who is the original complainant. Admittedly, the complainant viz. Sagarbhai Rathod is discharged from the hospital on 17.06.2021 as per the certificate issued by Pandit Din Dayal Upadhyaya Medical College and Hospital, Rajkot. Looking to the present case and contrary statement of the complainant in the dying declaration and in the complaint lodged against the appellants on 14.06.2021 and considering the nature and gravity of assertion made against the appellants and in the facts and circumstances of the case and considering the nature of allegations made against the appellants in the First Information Report as well as considering the role of present appellants in the alleged offence, this Court is of the considered opinion that this is a fit case to exercise the discretion in favour of present appellants by enlarging them on regular bail and hence, the prayer sought for by the present appellants requires consideration. Hence, this

Court is of the view that present appeals deserve consideration In the result, present Criminal Appeals are allowed and the order dated 13.08.2021

passed by the learned Special Judge (Atrocity), Dhari in Criminal Misc. Application No.106 of 2021 as well as order dated 26.08.2021 passed by the

learned Second Additional Sessions Judge, Dhari in Criminal Misc. Application No.107 of 2021 are hereby quashed and set aside. The appellants are

ordered to be enlarged on regular bail on furnishing a bond of Rs. 10,000/- each with one surety of like amount to the satisfaction of the trial Court and

subject to the conditions that appellants 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 India without prior permission of the concerned Trial Court;

[e] furnish the present 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 this Court;

[f] not enter within the residential area of the complainant for a period of four months.

The authorities will release the appellants only if they are 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 prima facie observations made by this Court in the present order. Notice is discharged.

Direct Service is permitted.