

(2020) 01 GUJ CK 0009
In the Gujarat High Court
Case No : R/Criminal Appeal No. 2397 Of 2019

Dharmesh @ Dharmo @ Bhano Amrubhai Dhakhda	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 07-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 323, 504, 506(2)
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocity) Act, 1989 — Section 3(2)(5)(a), 3(1)(R)(S), 14A

Citation : (2020) 01 GUJ CK 0009

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

Bench : Single Bench

Advocate : Gaurav Chudasama, Harshit R Purohit, Hirak P Ganguly, Jayesh B Chaudhary, MH Bhat

Final Decision : Allowed

Judgement

B.N. Karia, J

Learned advocate for the respondent No.2 has filed affidavit-in-reply of the respondent no.2, which is taken on record.

The appellant has filed Criminal Misc. Application No. 401 of 2019 before the court of learned Additional Sessions Judge, Rajula u/s 439 of the Code of Criminal Procedure, 1973 requesting to enlarge the appellant on regular bail on account of offence being registered vide II- C.R. No. 162 of 2018 with Rajula Police Station for the offence punishable u/s 323, 504, 506(2) and 114 of the Indian Penal Code and u/s 3(2)(5)(a), 3(1)(R)(S) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocity) Act, 1989 (for short "the Atrocities Act"), wherein the learned Additional Sessions Judge, Rajula rejected the said application on 16th November 2019.

Feeling aggrieved by the said order, the appellant preferred said appeal u/s 14A

of the Atrocities Act.

Heard learned advocate for the appellant and learned APP Mr. J. K. Shah for the respondent no.1- State.

Learned advocate for the appellant has submitted that the present appellant is wrongly involved in the offence by the Investigating Agency. It was further submitted that the appellant is not even named in the FIR but only on the suspicious ground, he has been arraigned as an accused in the present FIR , otherwise, the appellant has nothing to do with the present offence. FIR itself shows that the accused no.1 viz. Shailesh Kathi Darbar is the main accused and the complainant has attributed specific role to him and the complainant has not even disclosed the name of the present appellant. That, only general allegations are made but no specific role is mentioned for the offence of Atrocities Act nor any offence of IPC also. That, the appellant is aged about 22 years and he is not hardcore criminal and there is no change to commence the trial in near future and therefore, it is not in the interest of justice to keep him behind the bar for uncertain period. Hence, it was requested by learned advocate for the appellant to quash and set aside the impugned judgment and order passed by the learned Additional Sessions Judge, Rajula.

Learned APP for the respondent-State and learned advocate for the respondent No.2 have strongly objected the submissions made by learned advocate for the applicant and submitted that prima facie, involvement of the present appellant is established from the police papers collected by the Investigating Agency during the course of investigation. Inviting attention towards the statements of the prosecution witnesses, learned APP has submitted that eye witness has clearly stated that how the offence has been committed by the present appellant in his presence. Learned advocate for the respondent no.2 has also submitted that in the T.I. Parade, the appellant was identified by the complainant. That, injury certificate was collected by the Investigating Agency as he was treated in the Government Hospital at Rajula, District Amreli. As per the submissions made learned advocate for the respondent no.2, Shailesh Kathi Darbar, who is the accused no.1 and is absconded and not traced out by the investigating agency yet now. That, said accused Shailesh is the main offender in the offence and till today, he is not traced out by the Investigating agency, and therefore, prayer made by the present appellant cannot be granted. That, no lenient view can be taken by this Court by enlarging the appellant on regular bail, as involvement of the appellant is clearly established by the prosecution. Hence, it was requested by learned APP for the respondent-State and learned advocate for the respondent No.2 to dismiss present appeal.

Having considered the facts of the case, submissions made by learned advocates for the respective parties as well as learned APP for the respondent-State, it appears that the complainant is practicing advocate and has lodged present complaint. From the averments made by the complainant, it appears that the complainant was lodged by him against one Shailesh Kathi Darbar and two

unknown persons. Shailesh Kathi Darbar, who is the accused no.1 and is absconded and yet not traced out by the investigating agency. Considering the allegations made against the present appellant as well as MLC certificate collected by the Investigating Agency, it appears that abrasions marks are found. That the complainant was treated as outdoor patient and no serious injuries were found. Thus, looking to the allegations made against the present appellant in the complaint as well as prosecution papers, this Court is of the view to exercise discretion in favour of the present appellant by releasing him on regular bail.

Thus, considering the peculiar facts of the case, present appeal deserves consideration.

In the result, present Criminal Appeal is allowed and the impugned judgment and order dated 16th November 2019 passed by the learned Additional Sessions Judge, Rajula in Criminal Misc. Application No. 401 of 2019 is hereby quashed and set aside. The appellant is ordered to be enlarged on regular bail on furnishing a bond of Rs. 10,000/- with one surety of like amount to the satisfaction of the trial Court and subject to the conditions that appellant 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] mark presence before the concerned Police Station between 1st to 10th day of every English calendar month for a period of six months between 11:00 a.m. and 2:00 p.m.;

[f] 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;

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 prima facie observations made by this Court in the present order.

Rule is made absolute to the aforesaid extent. Direct service is permitted.