

(2023) 06 GUJ CK 0079

In the Gujarat High Court

Case No : R/Criminal Appeal No. 2035, 2036 Of 2022

Geetaba W/O Rajendrasinh Zala

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 19-06-2023

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r), 3(1)(s), 3(2)(v), 3(2)(va), 14(a)
Indian Penal Code, 1860 — Section 114, 307, 323, 324
Gujarat Police Act, 1951 — Section 138

Citation : (2023) 06 GUJ CK 0079

Hon'ble Judges : Nirzar S. Desai, J

Bench : Single Bench

Advocate : ND Nanavaty, Shaili A Kapadia, BH Solanki, Vrunda Shah

Final Decision : Allowed

Judgement

Nirzar S. Desai, J

1. By way of the present appeal under Section 14(a) of the Atrocities Act, the appellants - accused have prayed for anticipatory bail in connection with the FIR bearing No.11993007220891 of 2022 registered with "B" Division Police Station, Gandhidham, District Kachchh (East) for the offences punishable under Sections 307, 323, 324 and 114 etc. of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(v) and 3(2)(va) etc. of the Atrocities Act and under Section 138 of the G.P.Act.

2. Learned advocate for the appellants submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. He further submits that the appellants will keep themselves available during the course of investigation, trial also and will not flee from justice.

3. Learned advocate for the appellants on instructions states that the appellants are ready and willing to abide by all the conditions including imposition of

conditions with regard to powers of Investigating Agency to file an application before the competent Court for his remand. He further submit that upon filing of such application by the Investigating Agency, the right of appellants accused to oppose such application on merits may be kept open. Learned advocate, therefore, submitted that considering the above facts, the appellants may be granted anticipatory bail.

4. Learned Additional Public Prosecutor appearing on behalf of the respondent – State and learned advocate for the original complainant have opposed grant of anticipatory bail looking to the nature and gravity of the offence.

5. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the appellants.

6. This Court has considered following aspects,

(i) the appellant of Criminal Appeal No. 2035 of 2022 is a lady accused where as the appellants in Criminal Appeal No. 2036 of 2022 are young boys aged about 22 years and 26 years respectively. As per the FIR, the only allegations against them is that they have slapped the informant and one witness.

(ii) beyond the allegations of slapping and abusing, there is nothing against present applicant;

(iii) the Coordinate bench of this Court on 13.10.2022 granted relief in favour of present appellants and pursuant to which, they have appeared before the Investigating Officer on 18.10.2022; however, learned APP could not point out any material against them that they are not cooperating with the investigating officer or in between from 13.10.2022 till date, there is no untoward incident has happened for which present appellants can be held responsible.

(iv) As per the say of learned Senior Advocate Mr. Nanavaty, the main accused against whom the allegation of giving blow by sword has already been enlarged on regular bail and the aforesaid fact could not be disputed by learned advocate Mr. B.H.Solanki for the original complainant as well as learned APP for the respondent – State.

7. In the facts and circumstances of the present case, since the custodial interrogation of the appellants is not required, I am inclined to consider the case of the appellant.

8. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors., reported at [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab, reported at (1980) 2 SCC

565.

9. In the result, the present appeal is allowed. The appellants are ordered to be released on bail in the event of their arrest in connection with FIR No.11993007220891 of 2022 registered with "B" Division Police Station, Gandhidham, District Kachchh (East) on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) each with one surety each of like amount on the following conditions:

(a) shall cooperate with the investigation and make themselves available for interrogation whenever required;

(b) shall remain present at concerned Police Station on 26.06.2023 between 11.00 a.m. and 2.00 p.m.;

(c) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

(d) shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

(e) shall at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change residence till the final disposal of the case till further orders;

(f) shall not leave India without the permission of the concerned trial court and if having passport shall deposit the same before the concerned trial court within a week; and

(g) shall deposit Rs.9,62,000/- before learned trial Court within a period of 10 days.

(h) it would be open to the Investigating Officer to file an application for remand if he considers it proper and just and the learned Magistrate would decide it on merits;

10. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the appellants. The appellants shall remain present before the learned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the learned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police remand. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if, ultimately, granted, and the power of the learned Magistrate to consider such a request in accordance with law. It is clarified that the appellants, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

11. At the trial, the concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.
12. Accordingly, appeal are allowed. Direct service is permitted.