
(1992) 12 GUJ CK 0027
In the Gujarat High Court

Gordhanbhai Shankerbhai Thaker

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 24-12-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438

Citation : (1993) 1 GLR 516

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Judgement

B.J. Shethna, J.—This Application is filed by the applicants for releasing them on anticipatory bail in connection with the F.I.R., registered at Chhota Udepur Police Station, which is at Annexure "A" page 5 to this Application.

2. Mr. Vin, learned Advocate appearing for the applicants, submitted that the offence was committed on 13-9-1992 and the complaint was filed on 16-9-1992, almost after three days of the incident. The averments made in the complaint shows that there is no ring of truth in the story narrated by the complainant and the complaint is filed by another person and that too not at a place where the incident had occurred but at other place. Therefore, this Court should grant anticipatory bail to the present petitioners.

It is true that there is a delay of three days in lodging the complaint. But why there was delay in lodging the complaint late after three days is explained in the complaint itself by the complainant. The victims were the unfortunate labourers, who were allured by the accused persons for doing the labour work at their place on payment of money, who were not paid their dues and instead of that they were mercilessly beaten and threatened with their life by the applicants-accused. Thus, the victims who have worked for days together as bonded labourers with the complainant were threatened and mercilessly beaten by the accused when they had demanded money for their labour work. They were treated as slaves. The victims belong to Scheduled Tribe community and they were beaten so mercilessly that they had even no courage to go before the Police and lodge their

complaint against the accused. It was only when the complainant was told about this pathetic story, he showed some courage in going before the Police and lodging the complaint after three days of the incident, by taking up the cause of the helpless poor Scheduled Tribe persons. Thus, under the circumstances, in fact the delay of three days is no delay at all and even if it is considered to be delay, then it is satisfactorily explained in the complaint itself. Therefore, merely because there is delay of 3 days would not help the applicants-accused in this case. Therefore, the contention raised by Mr. Vin, that there is delay of three days and, therefore, this Court should grant anticipatory bail to the applicants-accused fails and it is rejected.

3. Second submission made by Mr. Vin that there is no ring of truth in the complaint is devoid of any merit. Whether the story narrated in the complaint is true or not can only be decided by the trial Court after the evidence is led by the prosecution. At this stage this Court has to only consider whether the averments made in the complaint disclosed the commission of the offence or not alleged to have been committed by the applicants-accused. From reading the complaint as it is, it is clearly born out that the applicant-accused have committed serious offences alleged against them. Therefore, this contention raised by Mr. Vin also fails and it is rejected.

4. Third contention raised by Mr. Vin that the complaint was not lodged by the victim person but by third person and, therefore, applicants-accused should be released on bail, is equally without any substance. As stated earlier, poor Scheduled Tribe persons, who are the victims of the incident, had no courage to go to the Police and when they narrated the incident to the complainant, he lodged the complaint. There is nothing in law that only the victim can move the criminal law into motion. Anyone can move the criminal law into motion and in this case the complainant has lodged the complaint. Therefore, this contention raised by Mr. Vin also fails and it is rejected.

5. Fourth contention raised by Mr. Vin that the complainant has filed the complaint at Chhota Udepur and not at Vidyanagar Police Station, which has got the jurisdiction to investigate the case as the alleged incident took place under the jurisdiction of Vidyanagar Police Station, is also without any substance. The background of the case, which is in brief narrated herein above, shows that in this case first of all the victims were so much scared that they were not even willing to go to police and when they narrated the version to the complainant, the complainant mustered courage to go to the police, but he also thought it fit to go to the nearest Police Station, i.e., at Chhota Udepur Police Station and not to Vidyanagar Police Station under the jurisdiction of which the offences are alleged to have been committed. In fact, from the endorsement made on the complaint it clearly appears that the said complaint was forwarded by the Chhota Udepur Police Station to the learned Magistrate at Vidyanagar, who has jurisdiction. Merely, because the complainant has filed the complaint at Chhota Udepur Police Station and not at Vidyanagar Police Station, that itself would not

entitle the applicants-accused to get anticipatory bail in view of the heinous offences alleged to have been committed by them.

6. The aforesaid submissions were made by Mr. Vin on the merits of the case as if the anticipatory bail application filed before this Court was maintainable. In fact, it was pointed out to Mr. Vin that when the offence registered against the accused under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, then the anticipatory bail application u/s 438 of Cr. P.C. would not be maintainable in view of Section 18 of the Atrocities Act. Therefore, this application is required to be rejected only on the ground that the anticipatory bail application u/s 438 of Cr. P.C. is barred in view of Section 18 of the Atrocities Act. However, Mr. Vin has produced a copy of one order passed by this Court and urged that this Court can entertain this application and pass the order in terms of that order. By that order, the applicant of that case was not granted anticipatory bail. He was only directed to remain present before the Special Court having jurisdiction to try the case and the same to be treated as his surrender to the custody of that Court and he was further directed to make a regular bail application before that Court on the day on which he appears before that Court. Till then he was directed not to be arrested. Thus, I fail to understand how that order will help Mr. Vin in this case. Such an order is not warranted in the facts of this case.

7. As stated earlier, I do not find any case in favour of the applicants-accused for releasing them on anticipatory bail on merits also. Therefore, this application is required to be rejected on both the counts, on the ground of its maintainability and also on merits.

8. It is made clear that the aforesaid observations have been made only because Mr. Vin has raised and pressed the aforesaid contentions. But it goes without saying that while trying the case, the trial Court shall not be influenced by the aforesaid observations, which are made while deciding the anticipatory bail application of the applicants-accused. And the trial Court shall decide the case on the evidence led by the prosecution before it.

With the aforesaid observations, this Application fails and it is rejected summarily at the admission stage.