

(2023) 05 GUJ CK 0012
In the Gujarat High Court
Case No : R/Criminal Appeal No. 945 Of 2023

?Hemingbhai Natvarbhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 02-05-2023

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3 (1) (g), 3(1)(r), 3(1)(s), 3(2)(va), 14(A)(2)
Indian Penal Code, 1860 — Section 143, 147, 148, 149, 427, 447, 504, 506(2)

Citation : (2023) 05 GUJ CK 0012

Hon'ble Judges : Nirzar S. Desai, J

Bench : Single Bench

Advocate : Kumar H Trivedi, Himanish J Japee, Hardik Soni

Final Decision : Disposed Of

Judgement

Nirzar S. Desai, J

1. By way of the present appeal under Section 14 (A)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, the applicants accused have prayed for release on anticipatory bail in case of arrest in connection with the FIR No. 11209041230237 of 2023 with Prantij Police Station, Sabarkantha for the offenses punishable under Sections 143, 147, 148, 149, 504, 447, 427 and 506(2) of the Indian Penal Code, Sections 3 (1) (g), 3(1)(r), 3(1)(s) and 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act.

2. Learned advocate for the applicants submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. Besides, the applicants are available during the course of investigation and will not flee from justice. In view of the above, the applicants may be granted anticipatory bail.

3.1 Learned advocate for the applicants on instructions states that the applicants 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 remand. He would further submit that upon filing of such application by the Investigating Agency, the right of applicants accused to oppose such application on merits may be kept open.

3.2 Learned advocate Mr.Trivedi from the papers pointed out that though the allegations are made in the FIR that the present applicants were carrying Dhariya and threat to kill was administered as such nothing has taken place and even as per FIR present applicants have even not touched complainant. He further submitted that the land in question is government land which does not belong to the original complainant and despite this fact the present complainant has filed this complaint.

4.1 Learned Additional Public Prosecutor appearing on behalf of the respondent – State has opposed grant of anticipatory bail looking to the nature and gravity of the offence.

4.2 Learned advocate Mr.Japee vehemently opposed the application and submitted that even as per the FIR, no prima facie case for anticipatory bail is made out. The present applicants have encroached upon the government land and threatened the complainant to be killed as in the FIR present applicants were present at the place with Dhariya and as there is prima facie case against the present applicants, they may not be granted anticipatory bail.

5.1 Having heard the learned advocate for the parties and perusing the investigating papers 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 applicants. 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. as reported at [2011] 1 SCC 6941, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of Shri Gurubaksh Singh Sibbia & Ors., as reported at (1980) 2 SCC 665.

5.2 This Court has considered the following facts while exercising the discretion in favour of the applicants.

(a) prima facie, the status of the original complainant seems to be doubtful as the land does not belong to the complainant;

(b) even as per the FIR, though the applicants were carrying Dhariya, they have not even touched the complainant;

(c) the present applicants have shown their willingness to cooperate with the investigation;

(d) no past antecedents are attributed to any of the applicant.

6. In the result, the present appeal is allowed by directing that in the event of applicants herein being arrested pursuant to FIR No. 11209041230237 of 2023 with Prantij Police Station, Sabarkantha, the applicants shall be released on bail

on furnishing a personal bond of Rs. 10,000/- (Rupees Ten Thousand only) each with one surety each of like amount on the following conditions that the applicants:

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

(b) shall remain present at the concerned Police Station on 09.05.2023 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 his residence till the final disposal of the case till further orders;

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

(g) 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;

7. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicants. The applicants 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 applicants, 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.

8. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the applicants on bail.

9. Rule is made absolute to the aforesaid extent. Application is disposed of accordingly. Direct service is permitted.