

(2021) 06 GUJ CK 0076
In the Gujarat High Court
Case No : R/Criminal Appeal No. 1228 Of 2020

Khushbu Mansukhbhai Vitthalani

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 14-06-2021

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(w)(1), 3(2)(va), 14A, 18, 18A, 18A(i)
Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 114, 342, 365, 376(d), 506(2)
Bombay Police Act, 1951 — Section 135

Citation : (2021) 06 GUJ CK 0076

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : HD Vasavada, Shivangi M Rana, Krina Calla

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. By this appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) Act, 1989 (hereinafter referred to as "the Atrocities Act" for short), the appellant has challenged the order dated 24.12.2019 passed in Criminal Misc. Application No.181/2019 by learned Additional Judge, Visavadar, whereby, the application filed by the appellant seeking anticipatory bail under Section 438 of the Cr.P.C in the event of her arrest in connection with the FIR being C.R.No.I-23/2019 registered at Bhesan Police Station, Dist. Junagadh, for the offence punishable under Sections 365, 342, 376(d), 506(2) and 114 of the Indian Penal Code and Sections 3(1)(w)(1), 3(2)(va) of the Atrocities Act and Section 135 of the Bombay Police Act, has been dismissed.

2. Heard Ms.Shivangi M. Rana, learned counsel for the appellant and Ms. Krina Calla, learned APP for the respondent State. Though served, none appears for respondent No.2-original complainant.

3. Learned counsel for the appellant has raised the following main contentions :-

(I) Ingredients of the alleged offence are clearly not made out and the FIR is registered only with a view to harass the appellant with malafide intention;

(ii) The appellant is absolutely innocent and has not committed the alleged offence as the FIR in question being registered because of private and personal grudge;

(iii) There is no prima facie case against the appellant and that, the appellant is not found remotely connected with the alleged offence;

(iv) That, the matrimonial dispute of brother of the appellant and respondent No.2 being converted into the criminal offence;

(v) Co-accused has already been extended the benefit of bail.

4. In view of the above contentions, learned counsel for the appellant prays to grant anticipatory bail to the appellant in the event of her arrest.

5. On the other side, learned Addl. Public Prosecutor appearing on behalf of the respondent " State has opposed this appeal and prays for its

rejection by contending that, on the basis of the allegations and material placed on record, no case for grant of anticipatory bail is made out. She

further submits that, Section 18-A of the Atrocities Act clearly bars to grant anticipatory bail and therefore, she prays that the appeal may be dismissed.

6. In the case of Subhash Kashinath Mahajan Vs. State of Maharashtra, [2018(6) SCC 454], the Apex Court held that, there is no absolute bar against

the grant of anticipatory bail in cases under the Atrocities Act, if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.

7. In the case of Union of India Vs. State of Maharashtra in Review Petition (Cri.) No.228 of 2018 in Criminal Appeal No.416 of 2018, it was opined

that direction nos.(iii) and (iv) issued by the Hon'ble Supreme Court deserve to be and are hereby recalled and consequently, we hold that direction no.

(v), also vanishes. The other directions remained as it is as there is no bar in

granting anticipatory.

8. In the case of Pruthvi Raj Chauhan Vs. Union of India & Ors, [AIR 2020 1088] three Judges Bench of the Supreme Court read down Section 18

of the Atrocities Act by declaring as follows:

“Considering the applicability of provisions of Section 438 Cr.P.C, it shall not apply to the case under Act of 89. However, if complainant does not

make out a prima facie for applicability of the provisions of the Act, the bar created by Section 18 and 18A (i) shall not apply.”

9. Looking to the facts and circumstances of the case, more particularly, plain reading of the complaint shows that, the brother of the appellant and

respondent No.2 got married on 06.07.2018 and thereafter, marriage disputes cropped-up and they decided to obtain divorce and accordingly, on

01.09.2018, they executed a divorce-deed duly notarized in presence of the witnesses. Thereafter, re-marriage between the parties having been taken

place. It is pertinent to note that, from very inception of the first marriage, family members of respondent No.2 were against the relationship and again

thereafter, respondent No.2 went to the matrimonial home. Under the circumstances, respondent No.2 lodged the FIR, inter alia, stating that, on

22.01.2019, she was abducted by the present appellant and other accused and was taken to the farm house, where she had been raped by the main

accused Himanshu Vitthalani, who happens to be the brother of the appellant.

10. In my considered view, prima facie, it appears that the name of the appellant being sister of the main accused having been disclosed and involved

in the alleged offence. Custodial interrogation of the appellant is not found to be essential for the purpose of investigation. Looking to the dispute

between the parties, no any past antecedent of the appellant being highlighted by the prosecution. The appellant has joined the investigation and is not

likely to abscond. Therefore, the appellant is entitled to pre-arrest bail and hence, present appeal deserves consideration.

11. In the result, present appeal is allowed and the order dated 24.12.2019 passed in Criminal Misc. Application No.181/2019 by learned Additional

Judge, Visavadar is hereby quashed and set aside. The appellant is ordered to be enlarged on bail in the event of her arrest in connection with the FIR

being C.R.No.I-23/2019 registered at Bhesan Police Station, Dist. Junagadh, on furnishing a bond of Rs.10,000/- each with surety of like amount on

the following conditions that the appellant;

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

(b) shall remain present at concerned Police Station on 24.06.2021 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 them

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 her 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;

(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;

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

appellant 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 appellant, 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. Nothing stated hereinabove, shall tantamount to the expression of any opinion on the merits of this case. Rule is made absolute

to the aforesaid extent.