

**(2019) 11 GUJ CK 0044**  
**In the Gujarat High Court**  
**Case No : R/Criminal Appeal No. 2183 Of 2019**

|                  |    |            |
|------------------|----|------------|
| Maheshbhai       | Vs | APPELLANT  |
| State Of Gujarat |    | RESPONDENT |

**Date of Decision :** 28-11-2019

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 439  
Indian Penal Code, 1860 — Section 323, 342, 504  
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)R, 3(2), 14A

**Citation :** (2019) 11 GUJ CK 0044

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

**Bench :** Single Bench

**Advocate :** Chintan S Popat, Kevalsinh B Rathod, M.H.Bhatt

**Final Decision :** Allowed

## Judgement

B.N. Karia, J

The appellant has filed Criminal Misc. Application No. 374 of 2019 before the Court of learned 5th (Ad?hoc) Additional District Judge, Veraval, Gir Somnath 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 I-C.R. No. 56 of 2019 with Sutrapada Police Station, Gir Somnath for the offence punishable u/s. 323, 342, 504 of Indian Penal Code and u/s. 3(1)R and 3(2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocity) Act, 1989 (for short "the Atrocities Act"), wherein, the learned learned 5th (Ad?hoc) Additional District Judge, Veraval, Gir Somnath rejected the said application on 25.10.2019.

Feeling aggrieved by the said order, the appellant preferred present appeal u/s 14A of the Atrocities Act.

Heard Mr. Chintan S.Popat, learned advocate for the appellant; Mr. Kevalsinh Rathod, Id. advocate for the respondent No.2 and Ms. M.H.Bhatt, learned APP for

the respondent?State.

Learned advocate for the appellant has submitted that the appellant has been falsely implicated in the alleged offence. That, as per the FIR itself, no any offence has been made out against the appellant. That, prima faice offence under the Atrocity is not made out against the appellant and therefore, also this appeal may be allowed. That, son of complainant has stolen money from the appellant's shop and therefore, son of the complainant has been scolded by the appellant. That, even case of the prosecution is taken as it is then also no any serious offence has been made out against the present appellant. That, the appellant has been arrested on 21.10.2019 and investigation is over, therefore, no further custody of the appellant is required. That, the present appellant is young boy having age of 19 years and having no criminal antecedents. Hence, it was requested by learned advocate for the appellant to quash and set aside the impugned judgment and order passed by learned 5th (Ad?hoc) Additional District Judge, Veraval, Gir Somnath and release the appellant on bail.

Learned APP for the respondent ?State as well as learned advocate for the respondent No. 2 have strongly objected the arguments advanced by learned advocate for the appellant and submitted that from the police papers itself, involvement of the present appellant is clearly established by the prosecution. That, nine years old boy was tied with the electric pole by the present appellant and thereafter he was cruelly beaten. The victim boy in his statement in form of question answers, he has clearly stated that on account of Rs. 10/? taken from the counter of the appellant's shop, he was tied with the belt and thread with the electric pole and thereafter he was cruelly beaten by the appellant. That, statement recorded by the Investigating Officer wherein, witnesses have supported the case of prosecution. That, prima facie involvement of the present appellant is proved by the prosecution and charge?sheet is filed. Therefore, no lenient view should be taken by this Court. Hence, it was requested by learned APP for the respondent?State and learned advocate for the respondent No.2 to dismiss the 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 and police papers produced on record, it appears that on account of some misunderstanding of getting Rs. 10/? more from the reception of the appellant's shop, this alleged incident was taken place. That, witnesses have supported the case of prosecution. If we consider the injuries certificate produced on record by the police, it appears that minor injuries were shown and outdoor treatment was taken by the victim boy. Considering the seriousness of the offence and allegations made in the complaint, this Court is of the view that present appeal deserves consideration and judicial discretion is required to be exercised in favour of the present appellant.

In the result, present Criminal Appeal is allowed and the impugned judgment and order dated 25.10.2019 passed by the learned 5th (Ad?hoc) Additional District

Judge, Veraval, Gir Somnath in Criminal Misc. Application No. 374 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] 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. Notice is discharged.

Direct service is permitted.