

(2022) 11 GUJ CK 0094
In the Gujarat High Court
Case No : R/Criminal Appeal No. 1105 Of 2022

Manharbhai Parmabhai Patel	Vs	APPELLANT
State Of Gujarat		RESPONDENT

Date of Decision : 23-11-2022

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 14(A)
Indian Penal Code, 1860 — Section 143, 504, 506(2)
Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Amendment Act, 2015 — Section 3(1)(r), 3(1)(s), 3(2)(v)
Code Of Criminal Procedure, 1973 — Section 438

Citation : (2022) 11 GUJ CK 0094

Hon'ble Judges : Hemant M. Prachchhak, J

Bench : Single Bench

Advocate : Namrata Mulchandani, Manish J Patel, V B Malik, CM Shah

Final Decision : Disposed Of

Judgement

Hemant M. Prachchhak, J

1. This is an appeal under Section 14(A) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Atrocity Act" for short) at the instance of the appellants – original accused for the anticipatory bail in connection with the FIR being C.R.No.11188007220180 registered with Meghraj Police Station, District: Arvalli for the offences under Sections 143, 504, 506(2) etc. of the Indian Penal Code and Section 3(1)(r), 3(1)(s), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

2. Heard Ms.Namrata Mulchandani, the learned counsel for Mr.Manish Patel, the learned counsel appearing for the appellants, Ms.C. M. Shah, the learned Additional Public Prosecutor for the respondent – State and Mr.Samir Pathan, the learned counsel for Mr.V.B. Malik, the learned counsel appearing for the

respondent – original complainant.

3. Ms.Mulchandani, the learned advocate for the appellants has submitted the same facts which are narrated in the memo of appeal and has prayed to release the appellants on bail.

4. Per contra, Ms.Shah, the learned Additional Public Prosecutor for respondent No.1 - State has vehemently opposed the grant of bail. Whereas, Mr.Pathan, learned counsel for Mr.Malik, learned counsel appearing for respondent No.2 – original complainant has strongly objected the present appeal and prayed that the present appeal may be dismissed.

5. Considering the averments made in the FIR, it appears that there is doubt as to the commission of the offence under the provisions of the Atrocity Act and the offence under the provisions of the Indian Penal Code. Now, considering the material placed on record, this Court is of the opinion that without discussing the evidence in detail and when there is no prima facie case under the Atrocity Act then the power under Section 438 of the Criminal Procedure Code is available to this Court and considering the factual aspects of the present case, the appeal is required to be allowed.

6. In the result, the present appeal is allowed. The impugned order dated 17.05.2022 passed by the learned Additional Sessions Judge, Modasa, District: Arvalli in Criminal Misc. Application No.371 of 2022 is hereby quashed and set aside. It is ordered that in the event of appellants herein being arrested pursuant to FIR being C.R.No.11188007220180 registered with Meghraj Police Station, District: Arvalli, the appellants shall be released on bail on furnishing a personal bond of Rs. 15,000/- (Rupees Fifteen Thousand only) each with one surety of like amount on the following conditions that the appellants shall :

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

(b) remain present at concerned Police Station on 06.12.2022 between 11.00 a.m. and 2.00 p.m. and in case of lady accused shall not remain personally present before the concerned police station, but as and when the Investigating Officer wants their presence, they may inform well in advance;

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

(d) 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) at the time of execution of bond, furnish their 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) not leave India without the permission of the Court and if having passports

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 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.

8. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the appellants on bail. The appeal stands disposed of, accordingly.

Direct service is permitted.