

(2022) 03 GUJ CK 0090
In the Gujarat High Court
Case No : R/Criminal Appeal No. 1888 Of 2021

Manjulaben Vitthalbhai Gevariya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 29-03-2022

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r)(s), 3(1)(x), 3(i)(x), 3(2)(v), 3(2)(5a), 14A, 18, 18A, 18A(i)
Code Of Criminal Procedure, 1973 — Section 438, 482
Code Of Criminal Procedure, 1989 — Section 438
Indian Penal Code, 1860 — Section 114, 323, 498(A), 506(2)

Citation : (2022) 03 GUJ CK 0090

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

Bench : Single Bench

Advocate : Aaditya D Bhatt, Chandni S Joshi, M.H.Bhatt

Final Decision : Allowed

Judgement

B.N. Karia, J

From the cause list, it appears that notice was duly served to respondent No.2 but, when the matter was called out nobody was appeared to assist the Court.

From the record , it appears that Registry has received letter from learned 10th Additional Sessions Judge, Surat dated 25th January, 2022 along with report of the Superintendent of learned 10th Additional Sessions Court, Surat confirming that notice was duly served to the respondent No.2 as per the endorsement made by ASI, Varachha Police Station, Surat.

Present appellants filed Criminal Misc. Application No.6433 of 2021 before the Court of learned 10th Additional District & Sessions Judge, Surat u/s 438 of the Code of Criminal Procedure, 1973 requesting to enlarge the appellants on anticipatory bail in the event of their arrest on account of offence being registered vide C.R. No.11210060212819 of 2021 with Varachha Police Station, Dist. Surat Rural for the offence punishable u/s. 498(A), 323, 114, 506(2) of the

Indian Penal Code and u/s.3(2)(5-a), 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocity) Act, 1989 (for short "the Atrocity Act") wherein, learned 10th Additional Sessions Judge, Surat rejected the said application vide order dated 1.11.2021.

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

Heard learned advocate appearing for the appellants and learned APP for the respondent-State.

Learned advocate for the appellants has submitted that appellants are totally innocent persons and they have been falsely implicated in the said offence. That, present case is nothing but a matrimonial dispute between husband and a wife, who separately lived at Mumbai and there is no involvement of the present appellants without and sharing any domestic relations with other family member, including the present appellants. In support of arguments learned advocate for the appellants has relied upon the decision of this Court in case of Avinashbhai Prabhudas Satapara Vs. State of Gujarat passed Criminal Appeal No. 596 of 2020; (2) decision of Delhi High Court in case of Danishkhan @ Sahil Vs. State (Govt. of NCT of Delhi) passed in Bail Application No. 3497 of 2020 (3) decision of this Court in case of Vishal Nanchanbhai Suthar Vs. State of Gujarat passed in Criminal Misc. Application No. 20040 of 2021(4) decision of the Apex Court rendered in case of Prathvi Raj Chauhan Vs. Union of India & Others reported in Writ Petition (C)No. 1015 of 2018. Hence, it was requested by learned advocate for the appellants to enlarge the present appellants on anticipatory bail in the event of their arrest.

Learned APP for the respondent State has strongly objected the submissions made by learned advocate for the appellants and submitted that looking to the investigating papers, involvement of the present appellants has clearly established by the prosecution. Learned APP has referred particularly last para of the complaint and submitted that instigation was given by the present appellants to the accused No.1-husband and he was insulted by her caste mainly that she was belonging to Scheduled Caste and Scheduled Tribes.

She has referred statements of brother and parents of respondent No.2 recorded by the Investigating Officer during the investigation and submitted that they have also supported the say of the complainant as present appellants being family members of the husband of the complainant were giving physical and mental cruelty to her. Complainant was deserted from her matrimonial home. That, clear allegations are made against present appellants and therefore, prima facie involvement of the present appellants in the alleged offence was established by the prosecution Therefore, learned APP for the State has requested to dismiss the present appeal.

If we consider the judgment of Hon'ble Supreme Court delivered in the case of Subhash Kashinath Mahajan Vs. State of Maharashtra reported in 2018(6) SCC

454, wherein the Hon'ble Supreme Court has held that there is no absolute bar against 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. View taken by the High Court of Gujarat in the case of Pankaj D. Suthar (supra) and Dr.N.T. Desai (supra) was approved by the Hon'ble Supreme Court. From the averments made in the complaint, basic ingredients of the offence, as alleged are missing in the complaint. Merely any particular word alleging someone caste would not involve the present appellant in the offence. There are no specific allegations made by the complainant against the present appellants in his complaint of committing any offence under the provisions of the Atrocity Act.

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. This Court has made scrutiny of the complaint and prima facie, it is found that there are no specific averments, attracting the provisions of the Act as mentioned in the complaint.

In the case of Gorige Pentaiah v. State of Andhra Pradesh and Ors, reported in (2008)12 Supreme Court Cases 531, it was held that according to Section 3(i)(x) of the Atrocity Act, the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe, he was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view.

Having considered the facts of the case, police papers and submissions made by learned advocate appearing for the appellants as well as learned APP for the respondent-State, it appears that on 28th August, 2021, FIR was lodged by the respondent No.2 against the present appellants. It also appears that complainant – Pritikaben was married to the accused no.1- Sureshbhai Gevariya on 6.5.2009. It also appears that appellant No.1 is mother-in-law, appellant No.2 & 3 are sister-in-law of the complainant. After marriage, the complainant moved with her husband to Room No.4, Rambujarat Yadav Ni Chali, SV Road, Bhavani Chowk, Ambavadi, East Mumbai and therefore the complainant along with her husband lived separately at Mumbai. Out of their said wedlock, one daughter and one son was born and both are minors. However, in terms of social relations, she had assimilated herself in the family and no one from the family ever stigmatized her on the ground that she is from the Tribal community and as far as the present appellants are concerned she has always been treated her like she is her daughter/family member and not her daughter in law and appellants used to take care of her as a child. Complainant was new at the family so everyone was supporting her. As per the version of the FIR, complainant alleges that the appellants and her family were behaving with cruelty towards the complainant

and were not treating her properly and alleged that the appellants and other accused were at first behaved very nice to her but as the time passed, they all started behaving her with cruelty and used to stigmatize her and call her that she is from the scheduled tribe and she is not as same as other members of family, is not correct. Present complainant has never stayed with the appellants Nos. 1 and 2. From the documents i.e. Aadhar Card produced on record, it appears that residential address of appellants No.1 and 2 is Room No.6, N.G.Patel Chawl No.2, Western Express Highway, Rawalpada, Dahisar (East) Mumbai. As per another documents produced on record i.e. Aadhar Card of respondent No.2, she is residing at 306, Saavan Appartment, Trikam Nagar Society, L.H.Road, Varachha, Surat City. These documents suggest that till the last scuffle with the husband, complainant lived in Mumbai at Room No.4, Rambujarat Yadav Ni Chali, Chali No.7, SV Road, Bhavani Chowk, Ambavadi, East Mumbai from where she took a train to come to Surat after calling her brother, she went her parental home. Prima facie, it appears from the complaint that allegations made against the present appellants are vague and lack specifics and as far as allegations under Atrocities Act are concerned, the involvement of the present appellants was not made out against the present appellants. Further, it appears that complainant may have matrimonial dispute against her husband but instead of trying to settle the issue, she has chosen to settle her scores against the entire family by way of filing this complaint. Further it appears that other co-accused were released on bail by competent Court of law. This Court in Criminal Appeal No. 596 of 2020 has referred judgment of Prathvi Raj Chauhan Vs. Union of India and others reported in 2020 SC 1036 wherein, the amended Section 18A of the Atrocity Act vis-a-vis the application for bail under Section 438 of the Cr.P.C was considered as under :-

"8. Concerning the provisions contained in section 18A, suffice it to observe that with respect to preliminary inquiry for registration of FIR, we have already recalled the general directions (iii) and (iv) issued in Dr. Subhash Kashinath's case (supra). A preliminary inquiry is permissible only in the circumstances as per the law laid down by a Constitution Bench of this Court in Lalita Kumari v. Government of U.P., (2014) 2 SCC 1, shall hold good as explained in the order passed by this Court in the review petitions on 1.10.2019 and the amended provisions of section 18A have to be interpreted accordingly.

9. The section 18A(i) was inserted owing to the decision of this Court in Dr. Subhash Kashinath (supra), which made it necessary to obtain the approval of the appointing authority concerning a public servant and the SSP in the case of arrest of accused persons. This Court has also recalled that direction on Review Petition (Crl.) No.228 of 2018 decided on 1.10.2019. Thus, the provisions which have been made in section 18A are rendered of academic use as they were enacted to take care of mandate issued in Dr. Subhash Kashinath (supra) which no more prevails. The provisions were already in section 18 of the Act with respect to anticipatory bail.

10. Concerning the applicability of provisions of section 438 Code of Criminal Procedure, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply. We have clarified this aspect while deciding the review petitions.

11. The court can, in exceptional cases, exercise power under section 482 Code of Criminal Procedure for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.

12. The challenge to the provisions has been rendered academic. In view of the aforesaid clarifications, we dispose of the petitions.”

(Per : Ravindra Bhat,J.)

28. In the meanwhile, Parliament enacted the amendment of 2018 11 (by Act No. 27 of 2019), which is the subject matter of challenge in these proceedings. The clear intention of Parliament was to undo the effect of this court’s declaration in Subhash Kashinath Mahajan (supra). The provisions of the amendment expressly override the directions in Subhash Kashinath Mahajan, that a preliminary inquiry within seven days by the Deputy Superintendent of Police concerned, to find out whether the allegations make out a case under the Act, and that arrest in appropriate cases may be made only after approval by the Senior Superintendent of Police. The Parliamentary intent was to allay the concern that this would delay registration of First Information Report (FIR) and would impede strict enforcement of the provision of the Act.

20. The judgment of Mishra, J has recounted much of the discussion and reiterated the reasoning which led to the recall and review of the decision in Subhash Kashinath Mahajan (supra); I respectfully adopt them. I would only add that any interference with the provisions of the Act, particularly with respect to the amendments precluding preliminary enquiry, or provisions which remove the bar against arrest of public servants Accused of offences punishable under the Act, would not be a positive step.

The various reports, recommendations and official data, including those released by the National Crime Records Bureau, paint a dismal picture. The figures reflected were that for 2014, instances of crimes recorded were 40401; for 2015, the crime instances recorded were 38670 and for 2016, the registered crime incidents were 40801. According to one analysis of the said 2016 report, 422,799 crimes against scheduled caste communities’ members and 81,332 crimes against scheduled tribe communities’ members were reported between 2006 and 2016.

30. These facts, in my opinion ought to be kept in mind by courts which have to try and deal with offences under the Act. It is important to keep oneself reminded that while sometimes (perhaps mostly in urban areas) false

accusations are made, those are not necessarily reflective of the prevailing and wide spread social prejudices against members of these oppressed classes. Significantly, the amendment of 2016, in the expanded definition of 'atrocities', also lists pernicious practices (under Section 3) including forcing the eating of inedible matter, dumping of excreta near the homes or in the neighbourhood of members of such communities and several other forms of humiliation, which members of such scheduled caste communities are subjected to. All these considerations far outweigh the petitioners' concern that innocent individuals would be subjected to what are described as arbitrary processes of investigation and legal proceedings, without adequate safeguards.

The right to a trial with all attendant safeguards are available to those accused of committing offences under the Act; they remain unchanged by the enactment of the amendment.

31. As far as the provision of Section 18A and anticipatory bail is concerned, the judgment of Mishra, J, has stated that in cases where no prima facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a prearrest bail.

32. I would only add a caveat with the observation and emphasize that while considering any application seeking prearrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant prearrest bail would defeat the intention of Parliament."

Decision of the Hon'ble Delhi High Court in case of Danish Khan @ Saahil (Supra) wherein it is observed as under:-

It is not the purport or meaning of section 3(2)(v) that every offence under the IPC attracting imprisonment of 10 years or more would come within the meaning of that provision merely because it is committed against a person who happens to be a member of a Scheduled Caste or a Scheduled Tribe. The enhanced punishment is attracted where the reason for commission of such offence under the IPC is the fact that the person belongs to a Scheduled Caste or a Scheduled Tribe. For an IPC offence to attract section 3(2)(v) of the SCST Act, it is necessary that the offender's action is impelled by the consideration that the victim is a member of a Scheduled Caste or a Scheduled Tribe. This is what the Hon'ble Supreme Court has held in the foregoing decisions; and this also conforms well with the Preamble to the SCST Act, which is: "... to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes ..." since this Special Act was enacted with a

view to making more stringent provisions for punishment inter alia of offences under the IPC which target persons belonging to a Scheduled Caste or a Scheduled Tribe by reason of their caste status.

Another decision of this Court in case of Vishal Nanchandbhai Suthar (Supra) wherein it has observed as under:-

"4. A bare reading of the FIR and the materials placed on record would show that after marriage, the husband and wife have started to reside in a rented house at Ahmedabad. Therefore, prima-facie, the allegations against the husband and in-laws with respect to alleged offence of rape etc. cannot be accepted. The respondent no.2 belongs to Scheduled Caste and Scheduled Tribe. After her marriage with accused no.1, she cannot claim the benefit of provisions of Atrocities Act. Thus, invocation of provisions of Atrocities Act are also with oblique motive. Mr. Darji, learned advocate for the applicants would state that the applicants have been arrested and presently they are on bail. Considering the facts and circumstances of the case, the matter deserves consideration."

In view of the aforesaid dictum of law and facts of the present case, prima facie provisions of Section 3(2)(5-a), 3(1)(r)(s) of the Atrocity Act would be doubtful to be applied in the present case. There is no averment made in the complaint that present appellants were knowing that however, respondent No.2 was member of SC and ST and they have committed any offence for insulted her. In such circumstances, this Court is of the view that complaint does not make out any prima facie case for the applicability of the provision of Atrocity Act therefore, barred under Section 18 and 18(a) would not apply as no prima facie case for material facts warranting arrest of the present appellants. Therefore, this Court is inclined to exercise the discretionary powers u/s. 438 of Cr.P.C granting anticipatory bail to the appellants in the event of their arrest pursuing to their complaint.

The decision of the Hon'ble Apex Court in Criminal Appeal No. 1311 of 2008 has referred Section 3(1)(x) of the Act which reads as under:-

3(1) Whoever, not being a member of Scheduled Caste or a Scheduled Tribes:-

(x)intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

In absence of any basic ingredients of the Act, no case is made out as alleged against the present appellants. Therefore, considering the decision rendered in the aforesaid citations, present appeal deserves consideration.

In the result, present Criminal Appeal is allowed and the impugned judgment and order dated 1.11.2021 passed in Criminal Misc. Application No. 6433 of 2021 by learned 10th Additional Sessions Judge, Surat is hereby quashed and set aside. The appellants are ordered to be enlarged on bail in the event of their arrest on furnishing a bond of Rs. 10,000/- (each) with surety of like amount on the following conditions that the appellants:-

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) shall remain present at concerned Police Station on 5.4.2022 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 Trial 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;

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.

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.

Registry shall communicate this order to the concerned Sessions Court as well as jail authorities.