

(2024) 04 GUJ CK 0029

In the Gujarat High Court

Case No : R/Criminal Appeal (For Anticipatory Bail) No. 321 Of 2024

Nileshkumar Lakshmichand Sheth

APPELLANT

Vs

State Of Gujarat & Anr

RESPONDENT

Date of Decision : 08-04-2024

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 14A
Code Of Criminal Procedure, 1973 — Section 156, 438
Indian Penal Code, 1860 — Section 107, 306

Citation : (2024) 04 GUJ CK 0029

Hon'ble Judges : J. C. Doshi, J

Bench : Single Bench

Advocate : M A Chauhan, Mirenkumar K Priyadarshi, Ratna Vora, SM Joshi

Final Decision : Allowed

Judgement

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J. C. Doshi, J

1. The present appeal is filed under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act") read with Section 438 of the Code of Criminal Procedure, 1973, the appellant accused has prayed to release him on anticipatory bail in the event of his arrest in connection with the FIR being I-C.R. No.11187002230405 of 2023 registered with Balasinor Police Station, Mahisagar.

2. Heard learned advocate Mr.M.A.Chauhan appearing for appellant, learned APP Mr.S.M.Joshi for the respondent – State and Ms.Ratna Vara appearing for the respondent No.2.

3. Learned advocate Mr.Chauhan would submit that initially A.D.Case No.3 of 2023 was registered with Balasinor Police Station, whereupon after thorough investigation, Dy.SP, Lunawada filed report to SDM stating that cause of death is

heart attack and therefore, no offence is made out. It is submitted that thereafter, first informant – Kokilaben approached learned Special Judge by way of filing Criminal Inquiry which was registered as Criminal Inquiry No.3 of 2023, whereby, learned Special Judge exercised powers under section 156 of Cr.P.C. and directed concerned Police Station to register FIR. Pursuant to order dated 02.09.2023 FIR came to be registered. He further submitted that if allegations levelled against the appellant is taken as gospel truth, then also, it does not constitute offence under section 306 of IPC as necessary ingredients of abatement of suicide defined under section 107 of IPC are missing. He would further submit that even as per FIR deceased was working in Mamlatdar office. Deceased was issued show cause notice by the higher officers and that cannot be considered as abatement to commit suicide. He further submitted that there is no allegation of harassment which led the deceased to commit suicide. It is further submitted that in fact prosecution papers does not indicate that deceased has committed suicide. Cause of death as per PM report is heart attack and heart attack may have many reasons. Issuance of show cause notice by any means can be considered as abatement to commit suicide or instigating or goading person to commit suicide. It is further submitted that the appellant belong to ST community and caste certificate is produced on record and therefore, offence under Atrocities Act is not out against the appellant. It is further argued that the appellant was government servant and he has retired on 31.01.2022 and the alleged incident took place on 29.01.2023. It is submitted that there is no incident alleged to have been committed by the appellant which instigated the deceased to commit suicide. In view of above, it is submitted to give benefit of extraordinary relief. In support of above submission, learned advocate for the appellant has relied on judgment of Hon'ble Apex Court in the case of *Vaijnath Kondiba Khandke vs/. State of Maharashtra* [Criminal Appeal No.705 of 2018] and *Mohit Singhal v/s. State of Uttarakhand* [Criminal Appeal No.3578 of 2023].

4. Learned advocate for respondent No.2 – first informant has opposed grant of anticipatory bail looking to the nature and gravity of the offence.

5. Learned APP has produced report filed by Investigating Officer, which is taken on record. He has submitted that offence under section 306 of IPC is made out. Referring to para 4 of the FIR, it is submitted that deceased was kept consistently under pressure by the appellant and that might be reason for cardiac arrest. Deceased has suffered which none the less can be considered committal of suicide. Reason behind suicide is issuance of unnecessary show cause notice. He would submit that deceased was unnecessary harassed by higher officers. He has echoed his grievance before the Hon'ble Chief Minister and other officers and since no action was taken, he was consistently under duress and mental pressure which becomes reason for cardiac arrest. Thus, prima facie for abatement of suicide is made out. Thus, he submits to dismiss the appeal.

6. Having heard learned advocates for both the sides, at the outset, if we refer page no.170 to 185 of the compilation, it appears that consistently notices were

issued by the Mamlatdar to the deceased as he continuously remained absent from his service and as he did not attend service, he was called for explanation. These notices are part of service rules and service discipline. It was duty of the Mamlatdar to issue notice, if consistently deceased remained absent. The notices cannot be considered as harassment or duress which may cause adverse to mental health of deceased. He is bound to follow service rules. For any reasons, if deceased is not able to attend service, he is required to send leave report. What appears from page 179 that having notice consistent irregularity in service by deceased, the Collector, Lunawada initiated Departmental Inquiry against him. If such action are taken under service rules for breach of service discipline, same cannot be construed as mental harassment or duress which ignite deceased to commit suicide. What more appears from reading of PM note that deceased died due to heart attack. On reading private complaint registered by the first informant before the learned Special Court, Lunawada at nowhere it is stated by which steps deceased has committed suicide. Heart attack is reason for death of deceased. There might have several reasons for heart attack. In nutshell, there is no material found on record which link any act of appellant to death of deceased and there is no proximity stated therein.

7. In the case of *Vaijnath Kondiba Khandke (supra)*, the Hon'ble Supreme Court in para 7 and 8 as held as under :-

"7. At the same time the facts in *Praveen Pradhan v. State of Uttaranchal* and another² show that a junior officer was allegedly compelled by the superior to indulge in several wrongful practices at the work place; the junior officer was not comfortable in complying with such orders, as a result of which the junior officer was harassed and insulted on regular intervals and disgraced in front of the staff of the entire factory and rebuked with comments such as "had there been any other person in his place he would have died by hanging himself." The junior officer committed suicide leaving behind a note detailing all the incidents and asserting against his superior. In these circumstances prayer for quashing was rejected by this Court.

8. In the backdrop of these two lines of cases, we have gone through the material on record. There is no suicide note left behind by the deceased and the only material on record is in the form of assertions made by his wife in her reporting to the police. It is true that if a situation is created deliberately so as to drive a person to commit suicide, there would be room for attracting Section 306 IPC. However, the facts on record in the present case are completely inadequate and insufficient. As a superior officer, if some work was assigned by the applicant to the deceased, merely on that count it cannot be said that there was any guilty mind or criminal intent. The exigencies of work and the situation may call for certain action on part of a superior including stopping of salary of a junior officer for a month. That action simpliciter cannot be considered to be a pointer against such superior officer. The allegations in the FIR are completely inadequate and do not satisfy the requirements under Section 306 IPC. In our view, the facts in the

present case stand on a footing better than that in Madan Mohan Singh (supra) and there is absolutely no room for invoking provisions of Section 306 IPC. We are of the firm view that the interest of justice demands that the proceedings initiated against the appellant are required to be quashed.”

8. What appears that issuance of notices is insufficient and inadequate to link the appellant with cause of death of the deceased. Demanding of work or issuance of notice cannot be termed as abatement or harassment or even duress. It is part of service discipline. Action simplicitor cannot be considered to be pointer against the appellant for allegation of offence under section 306 of IPC. It is also to be noted that the appellant also belong to ST community. It is also relevant to be noted that the appellant has retired from service on 31.01.2022, whereas the alleged incident took place on 29.01.2023. Therefore also, the allegations of abetment made against the appellant prima facie do not hold ground.

9. Considering the aforesaid aspects and the law laid down by the Hon’ble Apex Court in the case of Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors. reported in (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. reported in (1980) 2 SCC 665 and also the decision in the case of Sushila Aggarwal v. State (NCT of Delhi) reported in (2020) 5 SCC 1, I am inclined to allow the present appeal.

10. In the result, the present appeal is allowed by directing that in the event of appellant herein being arrested in connection with the FIR being I-C.R. No.11187002230405 of 2023 registered with Balasinor Police Station, Mahisagar, the appellant shall be released on bail on furnishing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of like amount on the following conditions that he :

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

(b) shall remain present at the concerned Police Station on 22.04.2024 and 23.04.2024 between 11.00 a.m. and 2.00 p.m. and the IO shall ensure that no unnecessary harassment or inconvenience is caused to the appellant;

(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.

12. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the appellant on bail. It is needless to say, the observations made hereinabove are only tentative in nature and the trial Court shall not be influenced by the aforesaid observation.

Direct service is permitted.