

**(2021) 12 GUJ CK 0017**  
**In the Gujarat High Court**  
**Case No : R/Criminal Appeal No. 1388 Of 2021**

Nishitaben Krunal Soni

APPELLANT

Vs

State Of Gujarat

RESPONDENT

**Date of Decision :** 02-12-2021

**Acts Referred:**

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(2)(v), 14A, 18  
Indian Penal Code, 1860 — Section 294(b), 323, 506(2)  
Gujarat Police Act, 1951 — Section 135(1)

**Citation :** (2021) 12 GUJ CK 0017

**Hon'ble Judges :** Umesh A. Trivedi, J

**Bench :** Single Bench

**Advocate :** Gajendra P Baghel, CM Shah

**Final Decision :** Disposed Of

## Judgement

Umesh A. Trivedi, J

1. This Criminal Appeal is filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act') praying for an order of anticipatory bail in connection with the offence registered at C.R. No.11210007210564 of 2021 for the alleged offence punishable under Sections 323, 294(b) and 506(2) of the Indian Penal Code (for short, 'IPC'), Section 135(1) of Gujarat Police Act and Sections 3(2)(v) of 'the Act' registered with Jahangirpura Police Station, Surat. Abovesaid Sections are mentioned as it is reflected from the copy of FIR at page 10.

2. Respondent No.2 though served has chosen not to appear either in person or through an advocate. From the contents of First Information Report (for short, 'FIR'), it appears that first informant himself is an advocate by profession.

3. Heard Mr.Arjunsingh B. Chauhan, learned advocate for Mr.Gajendra P. Baghel, learned advocate for the appellant. He has submitted that the dispute, as

narrated in the 'FIR', pertains to a domestic dispute between the society members, which has been given colour of criminal complaint, that too, of an offence where provision of 'the Act' is invoked. The husband of the applicant, who is also alleged to have played similar role, has come to be released on regular bail. Only difference is that the nature of bail i.e. present application is for an order of anticipatory bail where Section 18 of 'the Act' bars the invoking the remedy. He has further submitted that considering the fact that the trivial domestic issue in between the society members, such a complaint is filed invoking provisions of 'IPC', which would attract the provisions of 'the Act', that too, by an advocate as first informant. Therefore, he has submitted that said provision even if invoked with a view to see that the accused is deprived of remedy available under the normal law, as such, no offence, as alleged, invoking the provisions of 'the Act' is committed and therefore, she being a lady accused, an order of anticipatory bail in favour of her may be granted.

4. As against that, Ms.C.M.Shah, learned APP submitted that in view of Section 18 of 'the Act' prayer for an order of anticipatory bail cannot be entertained more particularly when offence alleged against the applicant is very explicitly made out from the contents of the 'FIR' itself and therefore, she be refused an order of anticipatory bail.

5. Heard the learned advocates for the appearing parties. It appears that only because provisions of Section 506(2) of the 'IPC' is invoked, the provisions of 'the Act' is attracted and therefore, it can be argued that no anticipatory bail could be granted. However, looking at the contents of the 'FIR' as also narration made in it, that too, by an advocate being first informant, when allegation of beating invoking Section 323 of 'IPC' is not supported by any medical evidence merely because, it is asserted in the 'FIR', that too, pursuant to a quarrel between the society members without concluding finally, leaving it for the competent Court whether any offence is made out or not to be determined after full-flagged trial, I deem it fit to grant an order of anticipatory bail to the present lady accused.

6. Hence, the Investigating Officer is directed to release the appellant on bail in the event of her arrest in connection with the offence registered at C.R. No.11210007210564 of 2021 for the alleged offence punishable under Sections 323, 294(b) and 506(2) of the 'IPC', Section 135(1) of Gujarat Police Act and Sections 3(2)(v) of 'the Act' registered with Jahangirpura Police Station, Surat on her executing personal bond of Rs.10,000/- on the following terms and conditions that;

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

(b) she shall remain present at concerned Police Station on 16.12.2021 between 11.00 a.m. and 2.00 p.m.;

(c) she 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 from disclosing such facts to the court or to any police officer;

(d) she 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) she 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) she 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; and

(g) it would be open to the Investigating Officer to file an application for remand if 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 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.

8. At the trial, the concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.

9. With this, the present Appeal is disposed of as allowed. Direct service is permitted.