

(2021) 06 GUJ CK 0086
In the Gujarat High Court
Case No : R/Criminal Appeal No. 1233 Of 2020

Patel Hiteshbhai Mohanbhai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 15-06-2021

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r), 3(1)(s), 3(2)v, 14A, 18, 18A, 18A(1)
Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 114, 363, 366, 376(2)(n), 504, 506(2)
Protection Of Children From Sexual Offences Act, 2012 — Section 4, 6, 17

Citation : (2021) 06 GUJ CK 0086

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Yash K Dave, Vishal K Anandjiwala, Krina Calla

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

[1] Though served, none appears for the respondent no.2.

[2] By this appeal under Section 14AA of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as

'the Atrocities Act' for short), the appellant has challenged the order dated 26.11.2020 passed by the learned Additional Sessions Judge, Chhota?

Udepur in Criminal Misc. Application No.899 of 2020, whereby the application filed by the appellant seeking anticipatory bail under Section 438 of the

Criminal Procedure Code in the event of arrest in connection with the First Information Report being CR. No.11184001201190 of 2020 registered with

the Bodeli Police Station, Chhota?Udepur for the offences punishable under Sections 363, 366, 504, 506(2), 376(2)(n) & 114 of the IPC, Sections 4, 6

& 17 of the POCSO Act and Sections 3(1)(r), 3(1)(s), & 3(2)v of the Atrocities Act, has been dismissed.

[3] Being aggrieved by the impugned order, the appellant has preferred present appeal under Section 14A of the Atrocities Act.

[4] Heard Mr.Vishal Anandjiwala, learned counsel for the appellant and Mrs. Krina Calla, learned APP for the respondent State.

[5] Learned counsel appearing on behalf of the appellant has raised the following main contentions:Â?

(i) ingredients of the alleged offence are clearly not made out and the FIR is registered only with a view to harass the appellant with mala fide

intention:

(ii)the appellant is absolutely innocent and has not committed the alleged offence as the FIR in question being registered because of private and

personal grudge; (iii)there is no prima face case against the appellant and that, the appellant is not found remotely connected with the alleged offence;

(iv)there are no other criminal antecedents against the appellant.

[6] In view of the above contentions, learned counsel for the appellant prays to grant anticipatory bail to the appellant in the event of his arrest.

[7] On the other hand, Mrs.Krina Calla, learned Additional Public Prosecutor appearing on behalf of the respondent â?" State opposed the present

appeal and prays for its rejection by contending that, on the basis of the allegations and material placed on record, no case for grant of anticipatory bail

is made out. She further submits that Section 18Â?A of the Atrocities Act clearly bars to grant anticipatory bail and therefore, she prays that the appeal

may be dismissed.

[8] In the case of Subhash Kashinath Mahajan Vs. State of Maharashtra, [2018(6) SCC 454], the Apex Court held that, there is no absolute bar

against the 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.

[9] 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.

[10] In the case of Pruthvi Raj Chauhan Vs. Union of India & Ors, [AIR 2020 1088] three Judges Bench of the Supreme Court read down Section 18

of the Atrocities Act by declaring as follows:

“Considering the applicability of provisions of Section 438 Cr.P.C, it shall not apply to the case under Act of 89. However, if complainant does not

make out a prima facie for applicability of the provisions of the Act, the bar created by Section 18 and 18A (I) shall not apply.”

[11] Having heard learned advocates for the parties and perused the case papers available on record, it appears that the accused Anitbhai Ramanbhai

Nayka had abducted the victim from her village and taken to the village Bodeli, where she had been raped by the accused Anitbhai. The role of the

present appellant is emerging out from the FIR is that he had earlier acted as a mediator in the settlement with the parties, and thereafter he abetted

the main accused in the alleged commission of rape and abduction. This Court is of the considered view that the name of the appellant has been

disclosed mainly on the ground that he took active part in the earlier settlement. Thus, the plain reading of the FIR and considering the role attributed

to the present appellant, custodial interrogation of the appellant is not found to be essential for the purpose of investigation. The appellant has joined the

investigation and is not likely to abscond. Therefore, the appellant is entitled to pre-arrest bail and hence, the present appeal deserves consideration.

[12] Under this circumstance, this Court is inclined to exercise the discretion in favour of the appellant. Hence, the present appeal is allowed and the

impugned order dated 26.11.2020 passed by the learned Additional Sessions Judge, Chhota Udepur in Criminal Misc. Application No.899 of 2020, is

hereby quashed and set aside. The appellant is ordered to be enlarged on bail in the event of their arrest in connection with the FIR being CR.

No.11184001201190 of 2020 registered with the Bodeli Police Station, Chhota Udepur on furnishing a bond of Rs.10,000/ with surety of like

amount on the following conditions that the appellant;

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

(b) shall remain present at concerned Police Station on 25.06.2021 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 them

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 concerned trial court and if having passport shall deposit the same before the concerned trial

court within a week;

(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;

[13] 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. Nothing stated hereinabove, shall tantamount to the expression of any opinion on the merits of this case.