

(2021) 06 GUJ CK 0107
In the Gujarat High Court
Case No : R/Criminal Appeal No. 197 Of 202

Rakesh @ Ramnikbhai Harjibhai Patel	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 22-06-2021

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r), 3(1)(s), 3(2)(va), 14A, 18, 18A, 18A(i)
Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 114, 323, 504, 50692

Citation : (2021) 06 GUJ CK 0107

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Pratik B Barot, Kuldeep D Vaidya, Krina Calla

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. Heard Mr. Pratik Barot, the learned counsel appearing for the appellants, Ms. Krina Calla, learned APP for the respondent State and Mr. Kuldeep

Vaidya, learned counsel for respondent No.2.

2. By this appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) Act, 1989 (hereinafter referred to

as "the Atrocities Act" for short), the appellants have challenged the order dated 21.01.2021 passed in Criminal Misc. Application No.16/2021 by

learned 2nd Additional Sessions Judge, Dhrangadhra, whereby, the application filed by the appellants seeking anticipatory bail under Section 438 of the

Cr.P.C in the event of their arrest in connection with the FIR being C.R.No.11211058200447/2020, registered at Bajana Police Station, Dist.

Surendranagar, for the offence punishable under Sections 323, 504, 506(2) and 114 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) and 3(2)

(va) of the Atrocities Act, has been dismissed.

3. Learned counsel for the appellants has raised the following main contentions :-

(i) The appellants are innocent and have been falsely implicated in the alleged offence;

(ii) Placing reliance upon the judgment of the Apex Court in the case of Pruthvi Raj Chauhan Vs. Union of India & Ors, [2020 (4) SCC 727], it was

submitted that the complainant failed to make out a prima facie case qua the applicability of the provisions of the Atrocities Act are concerned and

hence, bar created by Sections 18 and 18-A of the Act would not be applicable;

(iii) Place of the offence is a private place and therefore, the provisions of the Atrocities Act are not applicable;

(iv) That the original accused Nos.2 and 4 have been enlarged on regular bail by the concerned Court against whom serious allegations of causing

voluntary injuries having been alleged in the FIR. Thus, considering the role attributable to the present appellants, they have been falsely implicated in

the alleged offence.

4. In view of the above contentions, learned counsel for the appellants prays to grant anticipatory bail to the appellants in the event of their arrest.

5. On the other side, Ms. Krina Calla, learned Addl. Public Prosecutor appearing on behalf of the respondent "State and Mr. Kuldeep Vaidya,

learned counsel appearing for respondent No.2 - informant have opposed this appeal and pray 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. They further submit that, Section 18-A of the Atrocities

Act clearly bars to grant anticipatory bail and therefore, pray that the appeal may be dismissed.

6. 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.

7. 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.

8. 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:

â??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.â??

9. The case of the prosecution case is that, on 29.12.2020, when the informant was at his field, he received a phone call from present appellant No.1

Rakesh Patel and both of them had heated conversation with respect to the water valve, which had been given to the appellant by the informant. It is

further the case of the prosecution that, thereafter, the appellant No.1 along with Mohasinkhan Nasibkhan, Dishantbhai Patel and Sajidkhan

Ashrafkhan Malek, armed with deadly weapons came at the field and used filthy language and the informant was threshed by Mohasinkhna

Nasibkhan. At that time, the present appellant Rakesh Patel and other accused have threatened to kill him and insulted with an intent to humiliate the

complainant being a member of scheduled castes and scheduled Tribes. In this background of the facts, FIR came to be registered against the

appellants. Pursuant to the FIR, accused Nos.2 and 4 i.e. Mohasinkhan and Sajidkhan Malek respectively were arrested and they have been enlarged

on regular bail by the concerned Court. The appellants herein being original accused Nos.1, 3 and 5 had preferred anticipatory bail before the

concerned Sessions Court, which came to be rejected vide order dated 21.01.2021.

10. Being aggrieved by and dissatisfied with the order of learned Sessions Court, the appellants have preferred this appeal.

11. This Court has considered the arguments advanced by learned counsel for the respective parties and perused the case papers. It appears that the

appellants have not caused any voluntary injury upon the complainant. Appellant

No.3 Sushilaben Patel came into picture when the informant was on his way to her. After careful examination of the case papers, it reveals that before the incident, the complainant had filed cases under the provisions of the Atrocities Act against Mohasinhkhan and his family members. It further appears from the record that since 1995 to 2018, the informant had filed cases under the provisions of the Atrocities Act for the reasons mentioned in the case papers. Villagers have filed complaint against the informant alleging, inter alia, that, the complainant was habitual in invoking the provisions of the Atrocities Act for his vested interest. A copy of the representation addressed to Collector, Surendranagar, DSP, Surendranagar and other authorities has been placed on record by the appellants herein. Under such circumstance, this Court is of, prima facie, view that, due to enmity with Mohasinkhan and Sajidkhan Malek, names of the present appellants have been disclosed by invoking provisions of the Atrocities Act. Therefore, considering the role attributable to the present appellants and their custodial interrogation, is not found to be essential for the purpose of investigation more particularly when they have cooperated in the investigation, present appeal deserves consideration.

12. In the result, present appeal is allowed and the impugned order dated 21.01.2021 passed in Criminal Misc. Application No.16/2021 by learned 2nd Additional Sessions Judge, Dhrangadhra, is hereby quashed and set aside. The appellants are ordered to be enlarged on bail in the event of their arrest in connection with the FIR being C.R.No.11211058200447/2020, registered at Bajana Police Station, Dist. Surendranagar 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 themselves available for interrogation whenever required;
- (b) shall remain present at concerned Police Station on 02.07.2021 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 their 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 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. Nothing stated hereinabove, shall tantamount to the expression of any opinion on the merits of this case.