

(2023) 03 GUJ CK 0018
In the Gujarat High Court
Case No : R/Criminal Appeal No. 1690 Of 2022

Rushik Ishwardas Ramkabir (Rushik Kismatdas Ramkabir)	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 03-03-2023

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r), 3(1)(s), 3(2)(v)(a), 14(A)
Indian Penal Code, 1860 — Section 114, 323, 504, 508(2)
Code Of Criminal Procedure, 1973 — Section 438

Citation : (2023) 03 GUJ CK 0018

Hon'ble Judges : Umesh A. Trivedi, J

Bench : Single Bench

Advocate : Jay M Thanki, Nishith P Acharya, KM Antani

Final Decision : Allowed/Disposed Of

Judgement

Umesh A. Trivedi, J

1. The present Appeal is filed by the appellants praying for anticipatory bail under Section 14 (A) of the Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as 'Atrocities Act') in connection with an offence registered at C.R.No. 11218010220289 of 2022 with Udhyognagar Police Station, Porbandar for the offences punishable under Sections 323, 504, 508(2) and 114 of the Indian Penal Code as also under Sections 3(1)(r), 3(1)(s) and 3(2)(v)(a) of the 'Atrocities Act'.

2. Mr. Jay Thanki, learned advocate for the appellants – accused, submitted that on trivial issue of quarrel between the college students, the provisions of 'the Act' is wrongly invoked so as to deny the benefit of statutory remedy available under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') by the first informant. He has further submitted that even if the incident may not be denied, it does not call for invoking provisions of 'the Act'. As such, there appears no averments in the FIR itself, which attracts provisions of

'the Act'. The derogatory utterances with regard to caste mentioned by the witness, who is claimed to have accompanied the first informant, is not finding place in the First Information Report itself. It is further submitted that the appellants are aged about 19 years and 22 years and they are college going students and have to appear in the exams in near future, and therefore, it is submitted that they be granted an order in the nature of anticipatory bail.

3. Though endorsement on the cause list shows that respondent no.2 – first informant is served through concerned Police Station, he is neither present in person nor through an advocate.

4. While hearing the Appeal and admitting the same, the Court had protected the appellants, which has been continued till today.

5. Mr. K.M. Antani, learned Additional Public Prosecutor, submitted that the derogatory utterances insulting the caste of the first informant, that too, within public view is asserted by the witness, and therefore, prima facie, an offence under 'the Act' is made out, and therefore, in view of Section 18 of 'the Act' invoking the provisions of Section 438 of 'the Code' is barred, and therefore, he has submitted that the Appeal essentially praying for an order in the nature of relief under Section 438 of 'the Code' be refused and Appeal be dismissed.

6. Having heard learned advocate for the appellants as also learned Additional Public Prosecutor and going through the papers of investigation and the order impugned, it appears that there is a quarrel on trivial issue in between the college going students, which has given colour of criminal offence, that too, invoking the provisions of 'the Act', which deprives accused of the offence even resorting to Section 438 of 'the Code'. However, with a view not to prejudice the case of either side, the finding whether the provisions of 'the Act' can be invoked or not, is avoided while determining this Appeal. However, fact remains that there is a quarrel on a trivial issue between the college going students and there appears no injury /visible injury caused by the appellants or appear on the injured. It appears that the first informant took treatment without police yadi in Bhavsinhji Hospital, Porbandar where his father took him there. From the injury certificate dated 16.09.2022 forming part of the investigation papers, it reveals that for a mere pain on the knee, private parts, abdomen and tenderness, the patient is said to have been treated indoor, that too, for a period of 8 days. It is submitted by the learned advocate for the appellants that father of the injured – first informant is serving in that very hospital. Though his father had not taken him to the Hospital, the certificate reflects his name whereas the First Information reveals his friend Manoj took him to the Hospital. Though the certificate claims injured is treated indoor for 8 days, no documents further i.e. indoor case papers or treatment papers forming part of the certificate. If at all there is pain or tenderness on any part of the body, possibly indoor treatment is not required at all, and therefore, prima facie, it appears that quarrel in between students on trivial issue appears to have been given a colour of big thing in absence of any material exploiting the position of the father of the first

informant, who is serving in the very Hospital, and therefore, without concluding on anything, which may prejudice the case of anyone, I deem it fit to release the appellants on anticipatory bail.

7. Hence, this Court is inclined to consider the Appeal of the appellants - accused for bail. Hence, the Appeal is allowed and in the event of the appellants herein being arrest pursuant to the FIR, being C.R.No. 11218010220289 of 2022 with Udhyanagar Police Station, Porbandar, the appellants shall be released on anticipatory bail on executing a bond of Rs.10,000/- each (Rupees Ten Thousand only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that they shall;

[a] cooperate with the investigation and make available for interrogation whenever required;

[b] remain present at concerned Police Station on 09.03.2023 between 11:00 a.m. and 2:00 p.m.;

[c] 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] 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] furnish the present address of residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

[f] not leave India without the permission of the Court and if having passports 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;

8. 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.

9. The Authorities will release the appellants only if they are not required in

connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the lower court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions in accordance with law. At the trial, the trial court shall not be influenced by the observations of preliminary nature, qua the evidence at this stage, made by this Court while enlarging the appellants on bail.

10. With this, present Appeal stands disposed of as allowed.

Direct service is permitted.