

(2022) 12 GUJ CK 0024
In the Gujarat High Court
Case No : R/Criminal Appeal No. 1937 Of 2022

Sangh Samimben @ Bebuben Imtiyazbhai	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 22-12-2022

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r), 3(1)(s), 3(2)(va), 14(A)
Indian Penal Code, 1860 — Section 114, 294(b), 323, 325, 506(2)
Gujarat Police Act, 1951 — Section 135

Citation : (2022) 12 GUJ CK 0024

Hon'ble Judges : Hemant M. Prachchhak, J

Bench : Single Bench

Advocate : Valimohammed Pathan, L.B.Dabhi

Final Decision : Allowed

Judgement

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Hemant M. Prachchhak, J

1. This is an appeal under Section 14(A) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Atrocity Act" for short) at the instance of the appellant – original accused for the anticipatory bail in connection with the FIR being C.R.No. 11203023220542 of 2022 registered with Junagadh "A" Division Police Station , District: Junagadh for the offences under Sections 323, 325, 506(2), 294(b) and 114 of the Indian Penal Code and u/s. 135 of G.P.Act as well as Section 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocity Act.

2. Heard Mr.Valimohammed Pathan, learned appearing for the appellant and Mr. L.B.Dabhi, Additional Public Prosecutor for the respondent – State. Counsel learned.

3. Mr Pathan, learned advocate for the appellant has submitted that appellant is

innocent lady and has not committed any offence as alleged in the complaint. He has further submitted that looking to the complaint, it appears that before 7 years they have some disputes and therefore, there is no question to take revenge and therefore, also complaint appears to be false one and applicant deserves to be released on bail. Therefore, he has prayed to release the appellant on bail.

4. Per contra, Mr.L.B.Dabhi, learned Additional Public Prosecutor for respondent State has vehemently opposed the grant of bail and submitted that the present appeal may be dismissed.

5. Considering the allegations made in the FIR and role attributed to the present appellant and also considering the affidavit filed by the Investigating Officer before the learned trial Court, this Court is of the opinion that without discussing the evidence in detail and considering the factual aspects of the present case, the appeal is required to be allowed.

6. In the result, the present appeal is allowed. The impugned order dated 23.8.2022 passed by the learned Special Judge (Atrocity/POCSO) and learned 4th Additional Sessions Judge, Junagadh in Criminal Misc. Application No.464 of 2022 is hereby quashed and set aside. It is ordered that in the event of appellant herein being arrested pursuant to FIR being C.R.No. 11203023220542 of 2022 registered with Junagadh "A" Division Police Station, District: Junagadh, the appellant shall be released on bail on furnishing a personal bond of Rs. 15,000/- (Rupees Fifteen Thousand only) with one surety of like amount on the following conditions that the appellant shall :

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

(b) applicant is lady accused and she shall not remain personally present before the concerned police station, but as and when the Investigating Officer wants her presence, they may inform well in advance;

(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) at the time of execution of bond, furnish her address to the investigating officer and the court concerned and shall not change residence till the final disposal of the case till further orders;

(f) 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;

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 Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the appellant on bail. The appeal stands disposed of, accordingly. Direct service is permitted.