

(2022) 12 GUJ CK 0052
In the Gujarat High Court
Case No : R/Criminal Appeal No. 1288 Of 2022

Sanket Bharatbhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 15-12-2022

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 294(b), 323
Code Of Criminal Procedure, 1973 — Section 438

Citation : (2022) 12 GUJ CK 0052

Hon'ble Judges : Hemant M. Prachchhak, J

Bench : Single Bench

Advocate : Yash J Patel, MM Beg, LB Dabhi

Final Decision : Disposed Of

Judgement

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 Atrocities Act" for short) at the instance of the appellant – original accused for the anticipatory bail in connection with the F.I.R. No. 11197046220461 of 2022 registered with Shinor Police Station, Vadodara Rural for the offences punishable under Sections 323, 294(b) etc. of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) and 3(2)(v-a) etc. of the Atrocities Act.

2. Learned advocate for the appellant has submitted the same facts which are narrated in the memo of appeal and has prayed to release the appellant on bail.

3. Per contra, learned Additional Public Prosecutor for respondent No.1 - State has vehemently opposed the grant of bail and submitted that the present appeal may be rejected. On the same line learned Counsel for the respondent No.2-original complainant has also submitted that present appeal may not be

interfered with and the same may be rejected.

4. On perusal of the material placed on record, and considering the affidavit filed by the Investigating Officer, it prima facie appears that for small reason the scuffle took place, but there was no intention of the appellant as alleged by the complainant. The past antecedent is also reported against the present complainant and criminal complaint is lodged against the present complainant. Even, he was not reported on duty and therefore, he was called by the Talati at the office of panchayat and it seems that CCTV footage has also covered this issue. Considering the averments made in the FIR, it appears that there is doubt as to the commission of the offence under the provisions of the Atrocity Act and the offence under the provisions of the Indian Penal Code. Now, considering the material placed on record, this Court is of the opinion that without discussing the evidence in detail and when there is no prima facie case under the Atrocity Act then the power under Section 438 of the Criminal Procedure Code is available to this Court and considering the factual aspects of the present case, the appeal is required to be allowed.

5. In the result, the present appeal is allowed. It is ordered that in the event of appellant herein being arrested pursuant to F.I.R. No. 11197046220461 of 2022 registered with Shinor Police Station, Vadodara Rural, 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) remain present at concerned Police Station on 20.12.2022 between 11.00 a.m. and 2.00 p.m. and thereafter, shall mark his presence, on any day of first week of each month, for a period of six months.

(c) attend the office and after attending the office hours, he will not enter the area, where the complainant is residing.

(d) 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 his 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 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;

6. 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.

7. 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.