

(2021) 06 GUJ CK 0078
In the Gujarat High Court
Case No : R/Criminal Appeal No. 48 Of 2021

Solanki Rajvirsinh Cheharbhai	Vs	APPELLANT
State Of Gujarat		RESPONDENT

Date of Decision : 14-06-2021

Acts Referred:

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

Citation : (2021) 06 GUJ CK 0078

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Mittal N Patel, Krina Calla

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. 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 appellant has challenged the order dated 31.12.2020 passed in Criminal Misc. Application No.3055/2020 by the learned 7th Additional Sessions Judge, Ahmedabad (Rural) at Mirzapur, whereby, the application filed by the appellant 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.11192003200538/2020, registered at Sanand GIDC, Dist. : Ahmedabad (rural), for the offence punishable under Sections 323, 504, 114 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(iv) of the Atrocities Act, has been dismissed.

2. Heard Mr. M.N. Patel, learned counsel for the appellant and Ms. Krina Calla, learned APP for the respondent State. Though served, none appears for respondent No.2-original complainant.

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

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

(ii) name of present appellant is not mentioned in the FIR;

(iii) the appellant is a student studying in First Year B.A.;

(iv) That, the allegations made in the FIR do not attract the ingredients of provisions of the Atrocities Act;

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

5. On the other side, learned Addl. Public Prosecutor appearing on behalf of the respondent " State has opposed the grant of anticipatory bail

contending that, considering the facts of the FIR, prima facie, the offence of the Atrocities Act has been clearly made out. It was further submitted

that, Section 18A of the Atrocities Act clearly bars to grant anticipatory bail as prayed for by the appellants. Under the circumstances, learned APP

prays 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:

"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. Considering the contentions raised by learned counsel for the parties and perusing the case papers, it appears that, at the time of incident, the accused was working with Megnety Mareli Motherson Company and at the time of entering into the main gate of the company, the dispute with Harshadbhai Rajput was arose and thereafter on the same day, when the accused had completed his shift and was on the way towards his home, Harshadbhai and other persons caused voluntary injury and intentionally insulted and humiliate knowing fully that he belongs to SCST. Considering the material on record, the main accused Harshadbhai has been extended the benefits of bail. Thus, considering the dictum of law as referred to above, present appeal deserves consideration.

10. In view of the above, this Court is incline to extend the benefits of anticipatory bail to the appellant. In the result, present appeal is allowed and the impugned order dated 31.12.2020 passed in Criminal Misc. Application No.3055/2020 by the learned 7th Additional Sessions Judge, Ahmedabad (Rural) at Mirzapur,, 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 C.R.No.11192003200538/2020, registered at Sanand GIDC, Dist. : Ahmedabad (rural), 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 22.06.2021 between 11.00 a.m. a n d 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;

11. 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.

12. Direct service through e-mode.