

(2023) 02 GUJ CK 0106
In the Gujarat High Court
Case No : R/Criminal Appeal No. 166 Of 2023

Umesh Gambhir Gadekar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 28-02-2023

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r) (s), 3(2)(v)(a), 14(A, 18)
Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 323

Citation : (2023) 02 GUJ CK 0106

Hon'ble Judges : Umesh A. Trivedi, J

Bench : Single Bench

Advocate : Aditya Pancholi, Rajendra D Jadhav, Shruti Pathak

Final Decision : Allowed

Judgement

Umesh A. Trivedi, J

1. ADMIT. Ms. Shruti Pathak, learned Additional Public Prosecutor, waives service of notice of admission on behalf of respondent no.1 – State.
2. Though respondent no.2 is served, as per the endorsement on the cause list through the concerned Police Station, he is neither personally present nor through an advocate.
3. 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') as well as under Section 439 of the Code of Criminal Procedure, 1973. The appellants - accused have prayed to release them on anticipatory bail in connection with an offence registered at C.R.No. 11210056222503 of 2022 with Dindoli Police Station, Surat for the offences punishable under Sections 323 and 114 of the Indian Penal Code as also under Sections 3(1)(r) (s) and 3(2)(v)(a) of the 'Atrocities Act'.

4. Mr. Aditya Pancholi, learned advocate for Mr. Rajendra Jadhav, learned advocate for the appellants – accused, submitted that the co – accused – Santhosh Sahebrav Jhalte, who is named in the FIR, as also against whom the case of utterances is there, provisions of 'Atrocities Act' is invoked, is granted anticipatory bail by the coordinate Bench of this Court vide order dated 23.12.2022 passed in Criminal Appeal No.2435 of 2022, and therefore, he has submitted that even on the ground of parity the appellants are required to be released on anticipatory bail against whom no allegations attracting the provisions of 'Atrocities Act' are invoked. He has further submitted that on a trivial issue, while playing cricket, some verbal altercation took place and as alleged kick and fist blow were administered to the son of the first informant, and therefore, he has submitted that the offence under Indian Penal Code invoked is non-cognizable offence and bailable. However, provisions of 'Atrocities Act' is invoked in this Appeal praying for an order of anticipatory bail as offence, as alleged, are non-bailable, and therefore, he has submitted that the appellants – accused be released on anticipatory bail.

5. As against that, Ms. Shruti Pathak, learned Additional Public Prosecutor, has objected to grant of anticipatory bail as provisions of 'Atrocities Act' is invoked in view of Section 18 of the 'Atrocities Act'.

6. Having heard the learned advocate for the appellants – accused as also learned Additional Public Prosecutor and going through the impugned order, it is clear that so far as the allegations against the appellants are concerned, they have not been attributed prima facie any utterances on the basis of which the provisions of the 'Atrocities Act' can be invoked. At the same time, offence under Indian Penal Code alleged against the appellants is bailable and non-cognizable. Considering the fact that the co-accused - Santhosh Sahebrav Jhalte against whom 'Atrocities Act' is attributed has also been granted anticipatory bail by the coordinate Bench of this Court, as stated hereinabove, and therefore, I see no reason to refuse the same treatment to the present set of appellants, who are on a better footing than the appellants therein.

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 arrested pursuant to the FIR, being C.R.No. 11210056222503 of 2022 with Dindoli Police Station, Surat, the appellants shall be released on anticipatory bail on executing a bond of Rs.15,000/- each (Rupees Fifteen 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 06.03.2023 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.