

(2021) 06 GUJ CK 0103
In the Gujarat High Court
Case No : R/Criminal Appeal No. 27 Of 2021

Zarinabibi Bhurekhan @ Akramkhan Pathan	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 21-06-2021

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(w)(i), 3(1)(w)(ii), 3(2)(v), 3(2)(va), 14A, 18A, 18A(i)
Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 143, 147, 323, 328, 376(2)(n), 506(1)
Information And Technology Act, 2000 — Section 67

Citation : (2021) 06 GUJ CK 0103

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Mahesh K Poojara, Mohdshafi Shaikh, Neelam Chauhan, Urmila N Desai, 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, 1989 (hereinafter referred to as "the Atrocities Act" for short), the appellant has challenged the order dated 10.12.2020 passed in Criminal Misc. Application No.7315/2020 by learned Special Judge (Atrocity), City Civil & Sessions Court No.18, Ahmedabad City, whereby, the application filed by the appellant seeking anticipatory bail under Section 438 of the Cr.P.C in the event of her arrest in connection with the FIR being C.R.No.11191018201513/2020, registered at Gomtipur Police Station, Dist. Ahmedabad City, for the offence punishable under Sections 376(2)(n), 328, 323, 143, 147 and 506(1) of the Indian

Penal Code and and Section 67 of the Information Technology Act and Sections 3(1)(w)(i), 3(1) (w)(ii), 3(2)(v) and 3(2)(va) of the Atrocities Act, has been dismissed.

2. Heard Mr. Mahesh Poojara, learned counsel for the appellant, Ms. Krina Calla, learned APP for the respondent State and Ms. Neelam Chauhan, learned advocate for Ms. Urmila Desai, learned advocate for the respondent No.2-original complainant.

3. It is the submission of Mr. Mahesh Poojara, learned counsel for the appellant that for the incident of 17.11.2020, the FIR in question being reported on 21.11.2020. That the main accused Bhurekhan Pathan has been extended the benefit of bail wherein the respondent no.2 has not opposed his bail application. That the allegations made in the FIR do not attract the ingredients of the provisions of Atrocities Act. Under such circumstances, the appeal may be allowed.

4. On the other hand, 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 appellant. Under the circumstances, learned APP prays that the appeal may be dismissed.

5. 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.

6. 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.

7. 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:

â??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??

8. It prima facie appears that the name of the present appellant has been disclosed in the FIR due to dispute between the informant and the accused

Bhurekhan Pathan. The record further indicates that accused Bhurekhan Pathan has been enlarged on bail by the Court concerned. Under such

circumstances, the complainant failed to make out a prima-facie case for applicability of the provisions of Atrocities Act. As a result, the present

appeal deserves consideration. Consequently, this appeal being filed under Section-14A of the Atrocities Act is allowed and the impugned order dated

10.12.2020 passed in Criminal Misc. Application No.7315/2020 by learned Special Judge (Atrocity), City Civil & Sessions Court No.18, Ahmedabad

City is hereby quashed and set aside. The appellant is ordered to be enlarged on bail in the event of her arrest in connection with the FIR being

C.R.No.11191018201513/2020, registered at Gomtipur Police Station, Dist. Ahmedabad City, on furnishing a bond of Rs.10,000/- with one surety of

like amount on the following conditions that the appellant;

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

(b) shall remain present at concerned Police Station on 01.07.2021 between 11.00 a.m. And 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 her 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;

9. 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.

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