

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1625 of 2021**

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CHAUDHARY PRAVINBHAI REVABHAI
Versus
STATE OF GUJARAT

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Appearance:

MR TUSHAR CHAUDHARY(5316) for the Appellant(s) No. 1
HCLS COMMITTEE(4998) for the Opponent(s)/Respondent(s) No. 2
MR NIKHIL S VYAS(5663) for the Opponent(s)/Respondent(s) No. 2
MS. M.H. BHATT, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE B.N. KARIA

Date : 02/03/2022

ORAL ORDER

1. Present appellant filed Criminal Misc. Application No. 504 of 2021 before the Court of learned 3rd Additional Sessions Judge, Mehsana at Visnagar u/s. 438 of the Code of Criminal Procedure, 1973 requesting to enlarge the appellant on anticipatory bail in the event of his arrest in connection with the FIR being registered vide C.R. No.11206073210706 of 2021 with Vadnagar Police Station, Dist-Mehsana for the offence punishable u/s. 323, 332, 504, 506(2) and 114 of Indian Penal Code and Section 3(2(5-a) of the of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocity) Act, 1989 (for short "the Atrocities Act"), wherein learned 3rd Additional Sessions Judge, Mehsana at Visnagar rejected the said application on

20.10.2021.

2. Feeling aggrieved by the said order, appellant has preferred present appeal under Section 14(A) of the Atrocities Act.

3. Heard learned advocates for the respective parties and learned APP for the respondent-State.

4. Learned advocate for the appellant has submitted that appellant is falsely roped in the present offence and nothing to do with the said offence. That if the allegations levelled in the FIR is seen, and if it is believed then also no any ingredients of Section 3(2)(5-a) of Atrocities Act are made out. That from the bare of the FIR, it appears that no any abusive words are used by the appellant or other persons regarding the caste of the complainant as appellant was not aware about the caste of the complainant. That appellant has no any criminal antecedent as per the affidavit of Investigating Officer. Hence, it was requested by learned advocate for the appellant to allow present criminal appeal.

5. From the other side, learned advocate appearing for the respondent No.2 and learned APP for the respondent No.1-State have strongly opposed the prayer made by the appellant referring the schedule in the Act, it is submitted that prosecution has rightly added

Section 3(2) (5-a) of Atrocities Act. That being a government servant, appellant has committed this offence along with other co-accused persons, which is clearly established from the contents of the complaint itself lodged before the police authorities. It is further submitted that prima facie, appellant is involved in the present offence and therefore, no lenient view can be taken by this court in favour of the present appellant. Ultimately, learned advocate appearing for the respondent No.2 and learned APP for the respondent State have requested to dismiss the present appeal.

6. Having considered the facts of the case as well as arguments advanced by learned advocates appearing for the respective parties and learned APP for the respondent-State, it appears that on 02.09.2021 at about 8:30 p.m. in night hours, when the complainant and one other employee were present at sub-station of G.E.B. at that point of time, present appellant called the complainant and started saying that wthey they had cut off the lights of his village and thereby started abusing him on phone and further it is that after some time appellant along with other three persons came at the sub-station and started giving kick and fist blows and also had given threates and thereafter he had left the place and the complainant and other

employees were taken to hospital by other staff members.

7. If we read the entire FIR, no any abusive words were used by the present appellant or any other persons in respect of the caste of the complainant as appellant was not at all aware about the caste of the complainant. It also appears from the record that subsequent report was submitted by the Police Officer of the Vadnagar Police Station to learned Judicial Magistrate at Kheralu to add Section 3(2)(5-a) of the Atrocities Act disclosing that after registering the complaint, as the complainant was member of the Scheduled Caste or Scheduled Tribe, this Section 3(2)(5-a) was requested to be added in the FIR. There is no mention in the subsequent report of the Police Officer of Vadnagar Police Station that appellant had a knowledge in respect of the caste of the respondent No.2. Investigating Officer came into knowledge about the caste of the respondent No.2 and therefore, this report appears to be submitted by Investigating Officer.

8. If we consider the judgment of Hon'ble Supreme Court delivered in the case of *Subhash Kashinath Mahajan Vs. State of Maharashtra* reported in *2018(6) SCC 454*, wherein the Hon'ble Supreme Court has held that there is no absolute bar against 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. View taken by the High Court of Gujarat in the case of Pankaj D. Suthar (supra) and Dr.N.T. Desai (supra) was approved by the Hon'ble Supreme Court. From the averments made in the complaint, basic ingredients of the offence, as alleged are missing in the complaint. Merely any particular word alleging someone caste would not involve the present appellant in the offence. There are no specific allegations made by the complainant against the present appellant in his complaint of committing any offence under the provisions of Sections 3(2)(5)(a), 3(g),3(p),3(r),3(s)(z)(c)& u/s. 8 of the Atrocity Act.

9. 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 bail. This Court has made scrutiny of the complaint and prima facie,

it is found that there are no specific averments, attracting the provisions of the Act as mentioned in the complaint.

10. In the case of ***Gorige Pentaiah v. State of Andhra Pradesh and Ors***, reported in (2008)12 Supreme Court Cases 531, it was held that according to Section 3(i)(x) of the Atrocity Act, the complainant ought to have alleged that the appellant- accused was not a member of the Scheduled Caste or a Scheduled Tribe, he was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view.

11. From the facts of the police papers produced on record, it appears that there are no averments or allegations made by the respondent No.2 to attract any provisions of the Atrocities Act. Considering the decision rendered in the aforesaid citations and considering the allegations made against the present appellant by the respondent and role played by the present appellant, this Court is inclined to accept the prayer made by present appellant.

12. In the result, present Criminal Appeal is ***allowed*** and the impugned judgment and order dated 20.10.2021 passed in Criminal Misc. Application No. 504 of 2021 by learned 3rd Additional Sessions Judge, Mehsana at Visnagar is hereby quashed and set

aside. The appellant is ordered to be enlarged on bail in the event of his arrest 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 **09.03.2022** 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 her 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 his residence till the final disposal of the case till further orders;
- (f) shall not leave India without the permission of the Trial 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;

13. 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.

14. 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.

15. 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.

16. Registry is directed to send a copy of this order to the concerned Police Station as well as learned Sessions Court concerned through fax or email forthwith.

SUYASH

(B.N. KARIA, J)

