

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 92 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE B.N. KARIA**

| | | |
|---|---|--|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | |
| 2 | To be referred to the Reporter or not ? | |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | |

VARYAVA ABDUL VAHAB MAHMOOD
Versus
STATE OF GUJARAT

Appearance:

MR ISA HAKIM(10874) for the Appellant(s) No. 1
MR ROMIL L KODEKAR(5127) for the Opponent(s)/Respondent(s) No. 2
MR HARDIK SONI, APP for the Opponent(s)/Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE B.N. KARIA

Date : 04/04/2022
CAV JUDGMENT

1. By preferring 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 had challenged the order dated 28.12.2021 passed by the learned Principal Sessions Judge (Atrocities), Bharuch in connection with the FIR being

C.R.No.11199003211359, dated 15.11.2021 registered with Aamod Police Station, Bharuch.

2. Short facts of the present case are as under:

2.1 An FIR was registered with Aamod Police Station, Bharuch being C.R.No.11199003211359, dated 15.11.2021 on the information given by the respondent no.2 Shri Salman Vasant Patel/Pravinbhai Vasantbhai Vasava for alleged offences punishable under Sections 4 of Freedom of Religion Act and Section 120B, 153(B)(1)(c), 506(2) of the Indian Penal Code (hereinafter referred to as “the IPC” for short). As per the contents of the FIR, before 15 years, two of the accused viz. accused no.1-Shri Shabbirbhai Bakerywala and accused no.2-Shri Samadbhai Bakerywala came to the accused no.3 — Shri Abdul Aziz Patel/Ajitbhai Chagganbhai Vasava and by providing financial assistance, allegedly converted him to Islam and his name was changed from Ajit Chhaganbhai Vasava to Abdul Aziz Patel. It is further contended that the said persons have later provided financial aid and allured the accused no.4-Shri Yusuf Jivan Patel/Mahendra Jivan Vasava and accused no.5 — Shri Aiyub Barkat Patel/Raman Barkat Vasava to convert their religion. Thereafter, the accused nos. 3

to 6, who had already converted their religion, met with the respondent no.2 - informant in the year 2018, and respondent no.2 was also allegedly made to convert his religion to Islam and his name was changed to Patel Salman Vasantbhai and Aadhar Card for the said name was also got to be issued. As per the contents of the FIR, the appellants, on receiving financial aid and assistance from other accused, have converted around 37 Hindu families and 100 Hindus by providing them financial assistance and have also converted a house constructed with funds from Government to a place of worship — Ibadatgaah. It is further contended in the FIR that for the said purpose of conversion, the accused used to make statements hurting the sentiments of Hindus. It is further contended in the FIR that in the said process, around 15 persons have been converted. Thereafter, since the respondent no.2 — informant and the other persons wanted to revert to Hinduism, they were being threatened with dire consequences and not to do the same and on 26.10.2021 also such threat was given. Therefore, as per the contents of the FIR filed by the respondent no.2, his life was in danger. Hence, the FIR being C.R. No. 11199003211359 dated 15/11/2021 was registered with Aamod Police Station, Bharuch.

2.2 Subsequently, the Investigating Officer filed a report seeking to add Sections 466, 467, 468 and 471 of the IPC and Section 3(2)(5-A) of the Atrocities Act. The present appellant preferred bail application being Criminal Misc. Application No.1049/2021 filed by the accused nos.3 to 6 which was transferred to the Special Court as offences under the Atrocities Act were invoked. The said bail application came to be rejected by order dated 10.12.2021 in view of the affidavit filed by the Investigating Officer dated 09.12.2021, wherein it was stated that investigation is in progress and since many accused named in the FIR and additional accused named in the affidavit were absconding, the same would prejudice the investigation. Subsequently, on 16.12.2021, the offences under Section 4A of the Freedom of Religion Act and 84C of the Information Technology Act, 2002 are added in the FIR. In An affidavit has been filed by the Investigating Officer against the accused nos.3 to 6 declaring that the appellant and other such Maulvis were absconding, and they need to be arrested/interrogated. The appellant filed one anticipatory bail application on 16.12.2021. Another four accused named in the FIR were not arrested and preferred a quashing petition

before this Court being Criminal Misc. Application No.22422 of 2021. By order dated 21.12.2021, this Court was pleased to issue notice in the said petition and has sought information from the State regarding previous sanction under Section 6 of the Freedom of Religion Act. The Investigating Officer filed his affidavit dated 24.12.2021, *inter alia*, declaring that the appellant had facilitated financial assistance to the converttees and given religious sermons/takrirs demeaning Hindu religion. The Special Court, by impugned order dated 28.12.2021, rejected the anticipatory bail application preferred by the present appellant.

2.3 Being aggrieved and dissatisfied with the impugned order dated 28.12.2021 passed by the Special Court, the present appeal is preferred by the present appellant under Section 14A of the Atrocities Act for anticipatory bail under Section 438 of Cr.P.C.

3. Heard learned advocate for the appellant, learned advocate for the respondent no.2 as well as learned APP for the respondent – State.

4. Learned advocate for the appellant has submitted in his

arguments that alleged offence was committed before 15 years and two accused persons viz. (1) Shri Shabbirbhai Bakerywala and (2) Shri Samadbhai Bakeryawala came to accused no.3 - Shri Abdul Aziz Patel/Ajitbhai Chagganbhai Vasava and by providing financial assistance, allegedly converted him to Islam and his name was changed from Ajit Chhaganbhai Vasava to Abdul Aziz Patel. It is further submitted that the names of other accused nos.3 to 6, who had already converted their religion long back, met with respondent no.2-informant in the year 2018 and respondent no.2 was also allegedly made to convert his religion to Islam and his name was changed to Patel Salman Vasantbhai and Aadhar Card for the said name was also got to be issued. It is alleged in the complaint that the appellant, on receiving financial aid and assistance from other accused, has converted around 37 Hindu families and 100 Hindus by providing them financial assistance and has also converted a house constructed with funds from the Government to a place of worship – Ibadatgaah. It is further submitted that the name of the present appellant was not shown in the FIR by the respondent no.2, however, during the course of investigation, insinuations were made against the appellant and several other Muslim religious leaders/scholars,

clerics, etc. That while opposing the bail applications of accused nos.3 to 6, the Investigating Officer filed an affidavit dated 09.12.2021 declaring that the appellant and other such Maulvis were absconding and they need to be arrested/interrogated. It is further submitted that no specific allegations were made against the appellant. That the appellant has received phone calls and several times, has extended cooperation to the investigation. It is further submitted that the other accused persons, who are named in the impugned FIR, have preferred quashing petition before this Court, wherein notice was issued to the State. It is further submitted that no previous sanction was obtained under Section 6 of the Freedom of Religion Act by the prosecution. That allegations made by the Investigating Officer in his affidavit that the appellant had facilitated financial assistance to the convertees and given religious sermons/takrirs demeaning Hindu religion, are completely false and bogus. It is further submitted that no prosecution can be initiated except with the previous sanction of the District Magistrate. It is further submitted that under Section 3A of the Freedom of Religion Act, FIR can be filed by the aggrieved person or persons related to him by blood. It is further submitted that

respondent no.2 is not an aggrieved person and he has not the appellant as an accused in the FIR. It is further submitted that the appellant is made as an accused by the Investigating Officer without any complaint made by the respondent no.2, and therefore, he cannot be prosecuted for the allegations in the FIR as the same is violative of the mandate of Section 3A of the Freedom of Religion Act. It is further submitted that the Special Court has committed an error in not granting anticipatory bail as the appellant is roped in the present FIR, even though he has no connection with the conversions of the accused or the informant and has been residing in Samrod since 2017. It is further submitted that the appellant is an Islamic scholar and he is given sermons across the country exercising his fundamental right to speech and expression. It is further submitted that respondent no.2 himself has voluntarily converted to Islam by way of his own affidavit in the year 2018 and thereafter, applied before the Gujarat Government to change his name from Vasava Pravinbhai Vasantbhai to Patel Salman Vasantbhai and the same was published in gazette. It is further submitted that respondent no.2 himself has converted his religion and no one has forcefully insisted him to convert his religion as the same is

declared on oath in the year 2018. It is further submitted that the allegations made in the FIR are baseless and an afterthought and the FIR has been filed after passing of 15 years with gross unexplained delay. It is further submitted that the offences under the Atrocities Act are not applicable to the accused at all. It is further submitted that in the impugned FIR, allegations of threat to life were made specifically against accused nos.3, 5 and 9 without any general statement/allegation associating any other person. It is further submitted that the offences with respect to the forgery of Aadhar Cards are also made against accused named in the impugned FIR. It is further submitted that the offences as alleged against the appellant are not even *prima facie* made out and therefore, there is no bar and/or legal impediment in granting anticipatory bail to the appellant. In support of his arguments, the appellant has relied upon the judgment in the case of **Sushila Aggarwal and others Vs. State (NCT OF Delhi) and another** reported in **(2020) 5 SCC 1**. Hence, it is requested by learned advocate for the appellant to allow this appeal.

5. From the other side, learned APP for the respondent-

State as well as learned advocate for the respondent no.2 have vehemently opposed the submissions made by learned advocate for the appellant and submitted that the appellant is *prima facie* involved in the offence punishable under Sections 4, 4C and 5 of the Freedom of Religion At and Sections 120(B), 153(B)(1)(C), 153(A)(1), 295(A), 506(2), 466, 467 and 468 and 471 of the Indian Penal Code and Section 3(2)(5-A) of the Atrocities Act and Section 84C of the Information Technology Act, 2000. It is further submitted that the accused persons have been arrested by the Investigating Officer and the present appellant is connected with each other through whatsapp conversions. It is further submitted that the present appellant is serving as Maulvi at Maddrasa, Palsana and is actively involved in the conspiracy with other co-accused persons to convert a person from particular religion into another religion by hurting feelings of a particular religion. It is further submitted that the cash amount was distributed by the present appellant. It is further submitted that during the course of investigation, it was found by the Investigating Officer that in a criminal conspiracy, the appellant has played active role in commission of the offence. It is further submitted that for conversion of the particular community people to

another community, the appellant has provided financial aid. It is further submitted that for further investigation, presence of the appellant is required by the prosecution and the presence of the appellant is not found easily by the prosecution. It is further submitted that four children of the particular community were studying in a Madrasa by the present appellant. It is further submitted that as per the statement of the witnesses recorded under Section 164 of the Cr.P.C., procedure is going on. The appellant is prima facie clearly involved in the offence and his custodial interrogation is required by the Investigating Officer. Learned APP for the respondent – State has further referred the statements of Rajubhai @ Anil Dahyabhai Solanki, Dharmeshbhai Chhitubhai Vasava, Vijaybhai Dhirajbhai Vasava, Udesangbhai Jesangbhai Vasava, Mukeshbhai Dilipbhai Vasava and Rohitbhai Rameshbhai Vasava and others, submitting that from all the statements of the witnesses recorded during the investigation, involvement of the present appellant is strongly established by the prosecution. Considering the seriousness of the offence as issue is affected at large with number of particular community, it is requested by learned APP for the respondent – State as well as learned

advocate for the respondent no.2 to dismiss this appeal.

6. In the case of **Sushila Aggarwal and others Vs. State (NCT OF Delhi) and another (supra)**, the Hon'ble Supreme Court has observed as under:

“At this stage, it would be essential to clear the air on the observations made in some of the later cases about whether Section 438 is an essential element of Article 21. Some judgments, notably Ram Kishna Balothia, (1995) 3 SCC 221 and Jai Prakash Singh, (2012) 4 SCC 379 held that the provision for anticipatory bail is not an essential ingredient of Article 21, particularly in the context of imposition of limitations on the discretion of the courts while granting anticipatory bail, either limiting the relief in point of time, or some other restriction in respect of the nature of the offence, or the happening of an event. Such observations are contrary to the broad terms of the power declared by the Constitution Bench in Sibbia case. The larger Bench had specifically held that an “overgenerous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions.(Para 54)”

“The reason for enactment of Section 438 CrPC was parliamentary acceptance of the crucial underpinning of personal liberty in a free and democratic country. Parliament wished to foster respect for personal liberty

and accord primacy to a fundamental tenet of criminal jurisprudence, that everyone is presumed to be innocent till he or she is found guilty. Life and liberty are the cherished attributes of every individual. The urge for freedom is natural to each human being. Section 438 is procedural provision concerned with the personal liberty of each individual, who is entitled to the benefit of the presumption of innocence. As denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when not imposed by the legislature. (Para 56)”

“Application for anticipatory bail:

Consistent with the judgment in Gurbaksh Singh Sibbia, (1980) 2 SCC 565, when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest. (Paras 92.1 and 85.1)”

7. Whether to grant anticipatory bail or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the Court. Further, anticipatory bail would depend on the conduct and behaviour of the accused, continue after filing of the chargesheet till end of trial and order of anticipatory bail does not in any matter limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.

8. From the record produced before this Court, involvement of the present appellant, this Court is not inclined to accept the prayer of the appellant to enlarge the appellant on bail or to exercise the discretion wasted with the Court, and therefore, the judgment relied upon by the appellant would not apply in the facts of the present case.

9. Having heard learned advocates for the respective parties as well as learned APP for the respondent – State, it appears that the appellant has filed this appeal seeking anticipatory bail in connection with the FIR being C.R.No.11199003211359 dated 15.11.2021 registered with Aamod Police Station,

Bharuch for the alleged offences punishable under Sections 4, 4C and 5 of the Freedom of Religion At and Sections 120(B), 153(B)(1)(C), 153(A)(1), 295(A), 506(2), 466, 467 and 468 and 471 of the Indian Penal Code and Section 3(2)(5-A) of the Atrocities Act and Section 84C of the Information Technology Act, 2000. If we refer Section 3 of the Gujarat Freedom of Religion Act, 2003, it provides that no person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by use of force or by allurement or by any fraudulent means nor shall any person abet such conversion. By amendment Section 3 of the Gujarat 22 of 2003, the words "*or by any fraudulent means or by any fraudulent means or by marriage or by getting a person married or by aiding a person to get married nor*" are substituted. Now considering Section 3 of the Act, if we refer the statements of witnesses recorded by the Investigating Officer during the course of investigation, it appears that the present appellant and other co-accused persons have provided air-cooler, water cooler, lories, chatai for namaj and other articles. It further appears that allurement was also made by the accused persons including the present appellant by providing rationing, dresses, medicines and cash amount. It further

appears from the statement of these witnesses that Aadhar Card was also prepared, of the persons converted from one religion to another religion with the help of Mr. Bilal, resident of Surat. Amod, Molvi Yusuf Vali Hasan and Molvi Sajidbhai were convincing the persons of one religion to another religion as well as they were also provided medical help. Further, it appears from the statements of these witnesses that Ajij Chhagan, Jitu Puna, Raman Barkat and Mahendra Jivan have also created whatsapp group of the community and through video, speech, chatting, they were hurting feelings of one particular community. As per their statements, numbers of persons from one religion were converted to another religion by providing cash amount and other articles of their requirements. Accused persons were threatening them to follow their religion against their desire, etc. Further, it appears from the investigation papers that the present appellant had also provided certain articles as water cooler, freeze, chattai for namaj and cash amount to the persons converted from one religion to another religion and addition to provide free education. Further, it appears that the appellant was in contact with one Abdul Ajij, who also provided specific articles to the persons of one religion at Nadiad. The appellant

has also provided huge amount to one Abdul Haji. The Investigating Officer in his affidavits dated 09.12.2021 and 24.12.2021 has specifically alleged that while giving religious speeches/sermons/takrirs by the appellant, he has tried to convert the persons of one religion to another religion which clearly prohibits by Section 3 of the Act. Defence/statement made by learned advocate for the appellant cannot be considered at this juncture, as submitted. *Prima facie* from the record produced by the prosecution, it appears that the present appellant has attempted to convert directly or otherwise, any person from one religion to another by use of force or by allurement or by any fraudulent means nor any person abet such conversion.

10. Considering the material placed on record before this Court as well as reasons as discussed above, this Court is not inclined to accept the prayer to release the appellant on anticipatory bail, as prayed for. Hence, this appeal deserves to be dismissed and accordingly, the same is **dismissed**. Notice is discharged.

rakesh/

(B.N. KARIA, J)