

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 596 of 2020

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AVINASHBHAI PRABHUDAS SATAPARA
Versus
STATE OF GUJARAT

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Appearance:

MR LAXMANSINH M ZALA(5787) for the Appellant(s) No. 1
MR BHUNESH C RUPERA(3896) for the Opponent(s)/Respondent(s) No. 2
MR MITESH AMIN, PUBLIC PROSECUTOR, WITH MS CM SHAH, APP for
the Opponent(s)/Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

Date : 06/07/2020

ORAL ORDER

1. Heard learned advocate Mr. Laxmansinh Jhala for the appellant, learned advocate Mr. Bhunesh Rupera for the respondent no.2 and learned Public Prosecutor Mr. Mitesh Amin assisted by learned Additional Public Prosecutor Ms.C.M. Shah for the respondent – State through video conference.

2. By way of this appeal under Section 14A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“the SCST Act” for short), the appellant has prayed for anticipatory bail under section 438 of the Code of Criminal Procedure in connection with CR No. 11211057200244 of 2020 registered with Surendranagar City A Division police station, Surendranagar for offences under sections 306, 201 and 114 of the Indian Penal Code read with section 3(2) (v) of the SCST Act.

3. This Court (Coram; Hon'ble Mr. Justice Paresh Upadhyay) on 4th June, 2020 passed the following order :

"1. This is an application for anticipatory bail.

2. The appellant is an accused (No.3) and apprehends his arrest in connection with C.R. No.11211057200244 of 2020 registered with Surendranagar City 'A' Division Police Station, District : Surendranagar, for the offences punishable under Sections 306, 201 and 114 of the Indian Penal Code and Sections 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as amended by the Act of 2015.

3. In view of insertion of Section 18-A in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 vide the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018, more particularly sub-section (2) of the said Section 18-A, it may not be open to the Court to consider, as to whether discretion under Section 438 of the Code of Criminal Procedure, needs to be exercised in such cases or not. This application therefore may not be entertained, as not maintainable.

4. Learned advocate for the appellant has however drawn the attention of this Court to the order dated 04.05.2020 recorded on Criminal Appeal No.518 of 2020, which was arising from this very offence. Learned advocate for the appellant has further submitted that copy of only one of such orders is annexed with this application, however there are many such orders passed by the Court and those orders were after hearing the learned Additional Public Prosecutor. Mr.J.K.Shah, learned Additional Public Prosecutor does not dispute this factual aspect.

5. Judicial discipline demands that the orders passed by the Co-ordinate Bench should be followed and Court should not be heard in different voices, on broad principles of law. At the same time, following those orders and exercise of discretion may lead to a situation, which is prohibited under the law. This needs to be reconciled.

6. Registry is directed to place the papers of this application before Hon'ble the Chief Justice for appropriate consideration and if required, for placing it before the Division Bench."

4. Thereafter it appears that the matter was placed before the Hon'ble the Chief Justice who by order dated 9th June, 2020 has directed the Registry to place the matter as per the roster as it appears from the office note placed on record. Accordingly the matter was heard by this Court (Coram : Hon'ble Mr. Justice Biren Vaishnav) on 11th June, 2020 and the following order was passed :

"Heard Mr.Laxmansinh Zala, learned advocate for the appellant and Mr.Ronak Raval, learned APP for the respondent No.1-State.

Noted the order of this Court passed on 04.06.2020 as well as the order passed in Criminal Appeal No. 518 of 2020.

Issue Rule returnable on 24.06.2020. Mr.Ronak Raval, learned APP, waives service of rule on behalf of respondent No.1. Permitted to communicate the order of rule to respondent No.2 through E-mail and/ or fax or What's App."

5. Thereafter, the matter was adjourned to 24th June, 2020 and the following order was passed :

"Heard learned advocate Mr. Laxmansinh M. Zala for the appellant, learned advocate Mr. Bhunesh Rupera for the respondent no.2-original complainant and learned Additional Public Prosecutor Ms. C.M. Shah for the respondent-State through video conference.

Learned advocate Mr. Rupera appearing for the complainant seeks permission to file his appearance for the respondent no.2 and prays for time to file affidavit-in-reply. Permission is granted. Stand over to 1st July, 2020."

6. Learned advocate for the appellant submitted that the role ascribed to the appellant in the impugned complaint is to the effect that he is alleged to have deleted the CCTV camera footage. He further submitted that the appellant has no connection either with the deceased who committed suicide nor he was knowing the deceased at all. He further submitted that the name of the appellant is given by another person namely, Nileshbhai Shivilalbai Parmar who has already been enlarged on anticipatory bail by this Court by order dated 4th May, 2020 in Criminal Appeal No.518/2020. It was therefore, submitted that the appellant being on better footing than that of Nileshbhai Parmar, should be enlarged on anticipatory bail.

7. On the other hand, learned Public Prosecutor Mr. Mitesh Amin assisted by learned Additional Public Prosecutor Ms. C.M.Shah submitted that provision of section 3(2)(v) of the SCST Act is applied as the offences under sections 306, 201 and 114 are alleged to have been committed by the appellant and accordingly, once the offences are under the provisions of the IPC which prescribe punishment of more than 10 years, SCST Act applies automatically and therefore, on this ground alone, this appeal should not be entertained in view of the amended provision of section 18A of the SCST Act. He further submitted that there are allegations made in the compliant against the appellant under the Indian Penal Code, therefore, the appellant should not be enlarged on anticipatory bail.

8. Learned advocate Mr. Bhunesh Rupera for the respondent no.2 complainant submitted that this appeal is not

maintainable in view of the provision of section 18A of the SCST Act as section 3(2)(v) of the SCST Act is attracted in the facts of the case.

9. Having considered the rival submissions and having gone through the material on record as well as order passed by this Court on 4th June, 2020, it appears that the appellant was not knowing the deceased person namely, Anilbhai Keshavlal Joshi belonging to SCST category. Moreover the role of the appellant is only that he is alleged to have deleted the CCTV footage.

10. The Apex Court in case of **Prathvi Raj Chauhan v. Union of India and others** reported in AIR 2020 SC 1036, wherein the amended section 18A of the SCST Act vis-a-vis the application for bail under section 438 of the Code of Criminal Procedure is considered as under :

(Per : Arun Mishra, J.)

"8. Concerning the provisions contained in [section 18A](#), suffice it to observe that with respect to preliminary inquiry for registration of FIR, we have already recalled the general directions (iii) and (iv) issued in Dr. Subhash Kashinath's case (supra). A preliminary inquiry is permissible only in the circumstances as per the law laid down by a Constitution Bench of this Court in [Lalita Kumari v. Government of U.P.](#), (2014) 2 SCC 1, shall hold good as explained in the order passed by this Court in the review petitions on 1.10.2019 and the amended provisions of [section 18A](#) have to be interpreted accordingly.

9. The [section 18A\(i\)](#) was inserted owing to the decision of this Court in Dr. Subhash Kashinath (supra), which made it necessary to obtain the approval of the appointing authority concerning a public servant and the SSP in the case of arrest of accused persons. This Court has also recalled that direction on Review Petition (Crl.) No.228 of 2018

decided on 1.10.2019. Thus, the provisions which have been made in [section 18A](#) are rendered of academic use as they were enacted to take care of mandate issued in Dr. Subhash Kashinath (supra) which no more prevails. The provisions were already in [section 18](#) of the Act with respect to anticipatory bail.

10. Concerning the applicability of provisions of [section 438](#) Code of Criminal Procedure, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by [section 18](#) and [18A](#) (i) shall not apply. We have clarified this aspect while deciding the review petitions.

11. The court can, in exceptional cases, exercise power under [section 482](#) Code of Criminal Procedure for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.

12. The challenge to the provisions has been rendered academic. In view of the aforesaid clarifications, we dispose of the petitions."

(Per : Ravindra Bhat, J.)

28. In the meanwhile, Parliament enacted the amendment of 2018 11 (by Act No. 27 of 2019), which is the subject matter of challenge in these proceedings. The clear intention of Parliament was to undo the effect of this court's declaration in Subhash Kashinath Mahajan (supra). The provisions of the amendment expressly override the directions in Subhash Kashinath Mahajan, that a preliminary inquiry within seven days by the Deputy Superintendent of Police concerned, to find out whether the allegations make out a case under the Act, and that arrest in appropriate cases may be made only after approval by the Senior Superintendent of Police. The Parliamentary intent was to allay the concern that this would delay registration of First Information Report (FIR) and would impede strict enforcement of the provision of the Act.

20. The judgment of Mishra, J has recounted much of the discussion and reiterated the reasoning which

led to the recall and review of the decision in Subhash Kashinath Mahajan (supra); I respectfully adopt them. I would only add that any interference with the provisions of the Act, particularly with respect to the amendments precluding preliminary enquiry, or provisions which remove the bar against arrest of public servants Accused of offences punishable under the Act, would not be a positive step. The various reports, recommendations and official data, including those released by the National Crime Records Bureau, paint a dismal picture. The figures reflected were that for 2014, instances of crimes recorded were 40401; for 2015, the crime instances recorded were 38670 and for 2016, the registered crime incidents were 40801. According to one analysis of the said 2016 report, 422,799 crimes against scheduled caste communities' members and 81,332 crimes against scheduled tribe communities' members were reported between 2006 and 2016.

30. These facts, in my opinion ought to be kept in mind by courts which have to try and deal with offences under the Act. It is important to keep oneself reminded that while sometimes (perhaps mostly in urban areas) false accusations are made, those are not necessarily reflective of the prevailing and wide spread social prejudices against members of these oppressed classes. Significantly, the amendment of 2016, in the expanded definition of 'atrocities', also lists pernicious practices (under [Section 3](#)) including forcing the eating of inedible matter, dumping of excreta near the homes or in the neighbourhood of members of such communities and several other forms of humiliation, which members of such scheduled caste communities are subjected to. All these considerations far outweigh the petitioners' concern that innocent individuals would be subjected to what are described as arbitrary processes of investigation and legal proceedings, without adequate safeguards. The right to a trial with all attendant safeguards are available to those accused of committing offences under the Act; they remain unchanged by the enactment of the amendment.

31. As far as the provision of [Section 18A](#) and anticipatory bail is concerned, the judgment of Mishra, J, has stated that in cases where no prima

facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail.

32. I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under [Section 438](#) of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament."

11. In view of the aforesaid dictum of law, in the facts of the case prima facie the provision of section 3(2)(v) of the SCST Act is applicable on account of the alleged offences under sections 306, 201 and 114 of the IPC. However, it appears that the appellant was not knowing the deceased person and prima facie no offence can be said to have been committed by the appellant under sections 306, 201 and 114 of the IPC as it is only alleged that the appellant has deleted the CCTV footage.

12. In such circumstances, I am of the opinion that the complaint does not make out a prima facie case for applicability of the provisions of the SCST Act and therefore, the bar created by section 18 and 18A thereof shall not apply as no prima facie materials exist warranting arrest of the appellant. I am therefore, inclined to exercise the discretionary powers under section 438 of the Code of Criminal Procedure, and grant

anticipatory bail to the appellant, in the event of his arrest pursuant to impugned complaint.

13. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors.**, reported at [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of **Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab**, reported at (1980) 2 SCC 565.

14. The appellant is ordered to be released on bail in the event of his arrest in connection with a FIR being CR No. 11211057200244 of 2020 registered with Surendranagar City A Division police station, Surendranagar on his executing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of like amount on the following conditions:

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

(b) shall remain present at concerned Police Station on 09.07.2020 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 him 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 concerned trial court and if having passport shall deposit the same before the concerned 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;

15. 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.

16. At the trial, the concerned trial court shall not be influenced by the prima facie observations made by this Court in the present order.

17. Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/ Authority through Fax or E-mail.

PALAK BRAHMBHATT/RAGHUNATH NAIR

(BHARGAV D. KARIA, J)

