

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL NO. 96 of 2021
With
R/CRIMINAL APPEAL NO. 244 of 2021

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RAJESHBHAI JESINGBHAI DAYARA
Versus
STATE OF GUJARAT
=====

Appearance:

MR UM SHASTRI(830) for the Appellant(s) No. 1
MS MONALI BHATT, APP for the Opponent(s)/Respondent(s) No. 1
MS.AKSHITABA SOLANKI(6782) for the Opponent(s)/Respondent(s) No. 2
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CORAM:HONOURABLE MR. JUSTICE B.N. KARIA

Date : 15/02/2022

ORAL ORDER IN CR.A-96 OF 2021

Under the instructions, learned advocate for the appellant requests to permit the appellant to withdraw this appeal and seeks permission to withdraw the same.

Permission, as sought for; stands granted.

Present appeal stands disposed of as withdrawn.

(B.N. KARIA, J)

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ORAL ORDER IN CR.A-244 OF 2021

1. Present appellants filed Criminal Misc. Application No.15 of 2021 before the Court of learned 5th Additional Sessions Judge, Panchmahal at Godhra u/s. 438 of the Code of Criminal Procedure, 1973 requesting to enlarge the appellants

on anticipatory bail on account of offence being registered vide C.R.No.11207024200783 of 2020 with Godhra Taluka Police Station, Panchmahal for the offence punishable u/s. 354(A)(1), 354-D, 323, 504, 506(2) and 114 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(1) (w-1-2) and 3(2)(5A) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocity) Act, 1989 (for short "the Atrocities Act"), wherein learned 5th Additional Sessions Judge, Panchmahal at Godhra rejected the said application on 11.01.2021.

2. Feeling aggrieved by the said order, appellants have preferred present criminal appeal under Section 14 of the Atrocities Act.

3. Heard learned advocate for the appellants and learned APP for the respondent-State and learned advocate for the respondent no.2.

4. It is submitted by learned advocate for the appellants that no offence much less the offence as alleged in the FIR is being committed by the appellants and looking to the complaint alleged incident occurred on 19.11.2020 while the complainant has filed present complaint on 21.11.2020 after three days. It is further submitted that looking to the complaint, the names of the appellants are not shown in the

FIR and the complainant has in the complaint stated that later on, she came to know that the present appellants were present at the Jesinghbhai's petrol pump. It is further submitted that no offence under the Atrocities Act is *prima facie* made out against the appellants and the appellants have not insulted or used abuse any words alleged by the complainant and have not spoken any words against the complainant's caste mentioned by the complainant which will amount to the offence punishable under the Atrocities Act. It is further submitted that very vague and general allegations are made in the complaint which arises doubt. It is further submitted that the no offence as alleged has taken place and the appellants are falsely arraigned as accused in the offence only to settle the political dispute. Hence, it is requested by learned advocate for the appellants to allow this appeal.

5. From the other side, learned APP appearing for the respondent-State and learned advocate for the respondent no.2 have strongly objected the submissions made by learned advocate for the appellants and submitted that Section 18 clearly debars the present appellants to pray for anticipatory bail. It is further submitted that during the course of investigation, names of the present appellants were revealed

and their participation also and serious allegations are made against the present appellants by the victim. Hence, no liberty can be shown by this Court in favour of the present appellants. Hence, it was requested by learned APP appearing for the respondent- State to dismiss the criminal appeal.

6. 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 spoken alleging someone caste would not involve the present appellants 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.

7. 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.

8. 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.

9. Having heard learned advocate for the appellants and learned APP for the respondent-State, it appears that in the complaint, the respondent no.2 has stated that on 19.11.2020 at about 04:00 p.m., she was returning from Santrod to Merap, at that time, the accused nos.1 and 2 came and they have demanded for sexual from her, so she has informed her husband and thereafter, she along with her husband went to the house of the accused Hasmukhbhai and as Hasmukhbhai was present in his house, they went to Jesingbhai's petrol pump, at that time, Sureshbhai Jesingbhai, Rajeshbhai Jesingbhai and Jagdishbhai Jasingbhai came and they have given abusive words against her caste and have given kick and first blow to the witness Kamleshbhai, and therefore, she has filed the complaint under the Atrocities Act. It also appears that alleged incident occurred on 19.11.2020 while the complainant has filed present complaint on 21.11.2020 after three days and looking to the complaint, the names of the appellants are not shown in the FIR and the complainant has in the complaint stated that later on, she came to know that the present appellants were present at the Jesinghbhai's petrol pump. It also appears that no offence under the Atrocities Act is *prima facie* made out against the appellants

and the appellants have not insulted or used abuse any words alleged by the complainant and have not spoken any words against the complainant's caste mentioned by the complainant which will amount to the offence punishable under the Atrocities Act. From the complaint itself, it appears that the names of the present appellants were not disclosed when the complain was lodged by the respondent no.2. Thereafter, during the investigation, their names were revealed by the prosecution and they are involved in the offence. There is no allegation made against the present appellants to attack the provisions of the Atrocities Act and the appellants have not used abusive language against the complainant.

10. If we refer Section 3(5) (A) of the Act, it must be within knowledge of the accused person that such person is a member of Schedule Caste or Schedule Tribe or such property belongs to such member. It is nowhere alleged by the complainant that the accused persons were having knowledge that the complainant was the member of Schedule Caste or Schedule Tribe or such property belongs to such member. In absence of any specific allegations to attract Section 3(5) (A) of the Act, case of the prosecution cannot be believed at this juncture. Considering the schedule prescribed under the Act

and the facts of the case, the prayer made by the present appellants requires consideration.

11. In the result, present Criminal Appeal is **allowed** and the impugned judgment and order dated 11.01.2021 passed in Criminal Misc. Application No.15 of 2021 by the Court of learned 5th Additional Sessions Judge, Panchmahal at Godhra is hereby quashed and set aside. The appellants are ordered to be enlarged on bail in the event of their arrest on furnishing a bond of Rs. 10,000/- **each** with surety of like amount on the following conditions that the appellants:-

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

(b) shall remain present at concerned Police Station on **22.02.2022** 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;

12. 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.

13. 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.

14. At the trial, the trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the appellants on bail.

15. Notice stands discharged.

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.

rakesh/

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(B.N. KARIA, J)

THE HIGH COURT
OF GUJARAT

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