

2023 SCC OnLine Guj 2709

In the High Court of Gujarat at Ahmedabad
(BEFORE HASMUKH D. SUTHAR, J.)

Babubhai Shamjibhai Ramani

Versus

State of Gujarat

R/Criminal Appeal No. 1862 of 2023

Decided on August 29, 2023

Advocates who appeared in this case:

Mr. N.K. Majmudar(430) for the Appellant(s) No. 1

Mr. L.B. Dabhi, App for the Opponent(s)/Respondent(s) No. 1

Mr. Vashishta M. Joshi, Advocate for the Opponent(s)/Respondent(s)
No. 2

The Order of the Court was delivered by

HASMUKH D. SUTHAR, J.:— Present appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Atrocity Act") challenging the judgment and order dated 26.07.2023 passed by the learned District & Sessions Court at Savarkundla at Amreli in Criminal Misc. Application No. 156 of 2023, whereby the learned Judge rejected the application filed by the present appellant under Section 439 of the Criminal Procedure Code, 1973 seeking regular bail in connection with FIR being C.R. No. 11193053230081 of 2023 registered with Savarkundla Rural Police Station, District : Amreli for the offences punishable under Sections 406, 420, 504, 506(2) and 114 of the Penal Code, 1860, 1860 and sections 3(1)(r), 3(1)(s) & 3(2)(v)(a) of the Atrocity Act.

2. The present appellant is arrested and his bail application being Criminal Misc. Application No. 52 of 2023 came to be dismissed by the learned Special Judge and 4th Additional Sessions Judge, Savarkundla on 21.03.2023.

3. Learned advocate Mr. Vashishta M. Joshi states that he has instructions from the legal aid to appear on behalf of original complainant, he will file his Vakalatnama forthwith. He is permitted to appear and Registry is directed to accept his Vakalatnama.

4. Learned advocate Mr. N.K. Majmudar for the appellant has submitted that the present appellant has nothing to do with the written offence and false allegations have been levelled against the appellant as his daughter is a Sarpanch and the complainant wants to tarnish the

image of the appellant and his family. The appellant is not involved in any manner in the commission of offence and even otherwise there is investigation is over and now nothing is required and discovered and there is no purpose would be served as trial would take some time. Learned advocate for the appellant requested whatever condition imposed by this Court he is ready and willing to comply with as the co-accused is released by the Sessions Court. Hence, he has also requested to give benefit of parity and the appellant is required to be enlarged on regular bail by imposing suitable terms and conditions.

5. *Per contra*, learned APP appearing for the respondent - State has vehemently opposed the present appeal and stated that the conduct of the appellant is also required to be recovered. He has submitted that number of instances wherein the appellant has implicated in the offences and he has misbehaved with the police authorities also. He has also submitted that four offences are registered and extermment proceedings are also being initiated against the appellant. It is also submitted that considering the criminal antecedents of the appellant, present appeal is required to be dismissed.

6. Learned advocate Mr. Vashishta Joshi appearing for the original complainant has disputed the said aspects and stated that considering the role attributed to the present appellant and his criminal antecedents, the present appeal is required to be dismissed.

7. I have given thoughtful consideration to the arguments canvassed by learned advocates for both the sides. The investigation is over and charge sheet is filed and nothing is required to be recovered and discovered from the appellant. The object of the bail is not punitive but preventive obviously the trial would take some time and pending the trial and keeping the appellant behind the bar which is amongst to pre trial conviction and even otherwise considering the principles of personal liberty. As the co-accused, who were similarly situated, has already been released by the Sessions Court, present appellant-accused is also entitled for the benefit of law of parity as per the law laid down by this Court in the case of *Ramesh Batubhai Dabhi v. State of Gujarat*, (2011) 3 GLR 1150. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40.

8. Hence, the present appeal is allowed. The appellant is ordered to be released on regular bail in connection with FIR being C.R. No. 11193053230081 of 2023 registered with Savarkundla Rural Police Station, District : Amreli on executing a personal bond of Rs. 10,000/- (Rupees Ten Thousand Only) each with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that the appellant shall;

[a] not take undue advantage of liberty or misuse liberty;

- [b] not act in a manner injurious to the interest of the prosecution;*
- [c] surrender passport, if any, to the lower court within a week;*
- [d] not leave the India without prior permission of the concerned trial court;*
- [e] mark presence before the concerned Police Station between 1st to 10th day of every English calendar month for a period of six months between 11 : 00 a.m. and 2 : 00 p.m.;*
- [f] furnish the present address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of the concerned trial court;*
- [g] not enter into District Ameril and Bhavnagar till the trial is over except to mark his presence before the concerned Investigating Officer as well as attending the trial proceedings before the Trial Court.*
- [h] shall not take undue advantage of liberty for prolonging the trial by taking unnecessary adjournment;*

9. The authorities shall release the appellant only if the appellant is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Special Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Special Court to delete, modify and/or relax any of the above conditions, in accordance with law.

10. At the trial, the Trial Court shall not be influenced by the *prima facie* observations made by this Court in the present order.

11. Rule is made absolute to the aforesaid extent. Direct service is permitted.

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