

2023 SCC OnLine Guj 3124

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

Chirag Prafulkumar Patel

Versus

State of Gujarat

R/Criminal Appeal No. 2119 of 2023

Decided on September 21, 2023

Advocates who appeared in this case:

Mr. Kumar H. Trivedi(9364) for the Appellant(s) No. 1, 2

Mr. Vaibhav N. Sheth(5337) for the Opponent(s)/Respondent(s) No. 2

Mr. LB Dabhi, Addl. Public Prosecutor for the Opponent (s)/Respondent(s) No. 1

The Order of the Court was delivered by

HASMUKH D. SUTHAR, J.:— Present appeal under Section 14-A read with Section 18 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Atrocity Act") has been filed by the appellants apprehending their arrest in connection FIR being C.R. No. 11209016230612 of 2023 registered with Himatnagar 'A' Division Police Station, District Sabarkantha for the offences punishable under Sections 323, 504, 506(2), 143 and 149 of the Penal Code, 1860 and section 3(2)(vi) of the Atrocity Act.

2. Upon service of notice of Rule, learned APP has appeared on behalf of the respondent No. 1 - State of Gujarat and learned advocate Mr. Vaibhav Sheth has appeared on behalf of the original complainant.

3. Learned advocate for the appellants has submitted that the the complainant has filed the FIR as a counter blast as one complaint is filed against the brother of the complainant and that no such incident took place and appellants are falsely enroped in the offence. On the contrary, minor girls have been molested by the brother of the complainant in the fine arts class and in this connection incident took place and to save their skin, they have concocted the entire episode and filed the complaint. The complaint is filed belatedly after filing of the first complaint by the present appellants. Even on the face of it, there is no intention or any element of insult to the community. The omnibus allegations have been made against the accused persons and no specific role is attributed to the the present appellants. Present applicants and their family members are witness in the POCSO case

and hence, he has requested to exercise the jurisdiction in favor of the present appellants. Further, he has submitted that in the present application, there is no bar under Section 18 of the Atrocity Act to exercise the jurisdiction in favor of the present appellants. In support of his submissions, learned advocate for the appellants has relied on the decision of Hon'ble Supreme Court in the case of (i) *Prathvi Raj Chauhan v. Union of India*, (2020) 4 SCC 727; (ii) decisions of this Court in the case of *Kiran Himatlal Gadhavi v. State of Gujarat* rendered in Criminal Appeal No. 486 of 2021 and (iii) *A.K. Chaudhary v. State of Gujarat*, (2005) 3 GLH 444. Further, it is submitted that merely because quashing petition filed by the present appellants is withdrawn is not a ground to deny the exercise of discretion under Section 438 of the CrPC for anticipatory bail.

4. *Per contra*, learned APP has vehemently opposed the present appeal and stated that there is a bar of section 18 of the Atrocity Act to entertain the present appeal and there is a *prima facie* offence against the present appellants. So far as allegation of present FIR being counter blast to the complaint filed by the brother of the complainant is concerned, same is subject matter of evidence and is not required to be dealt with at this stage as the FIR *prima facie* discloses the offence and therefore, has requested to dismiss the present appeal.

5. Learned advocate Mr. Vaibhav Sheth appearing for the original complainant has also vehemently opposed the present appeal and by adopting the submissions of the learned APP has further stated that there is a suppression of material fact by the present appellants with regard to proceedings of quashing petition filed under Section 482 of the CrPC before this Court, which has been withdrawn by the present appellants and thus, *prima facie* offence is made out against the present appellants and hence, question of present FIR being fictitious and concocted FIR and counter blast to the complaint filed by the brother of the complainant does not arise. He has further stated that the FIR against the present appellants is not filed as a counter blast but at the first point of time. When the present complainant approached to the police station, due to influence on the part of the present appellants, complaint of the present complainant was not registered and this regard affidavits of several persons who were present at the police station came to be submitted before the learned Sessions Judge. Nonetheless, at 12 O' Clock, the complainant approached the DSP and at that time, with the indulgence of the DSP, complaint came to be filed. Hence, complaint filed against the present appellants is filed at the instance of the DSP and therefore, it cannot be said that there was delay on the part of the complainant in filing the present complaint. Hence, he has requested to dismiss the present appeal. He has further submitted that to prove the fact that the complainant remained present

at the police station, complainant had asked for CCTV footage through RTI application but same is denied under the guise that no such recording is available due to technical glitch in the police station. Considering all these facts, he has requested to dismiss the present appeal.

6. I have given thoughtful consideration to the arguments canvassed by learned advocates for respective parties. It is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon'ble Apex Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided.

7. Present appellants are facing charges for the offences under Sections 323, 504, 506(2), 143 and 149 of the Penal Code, 1860 and section 3(2)(vi) of the Atrocity Act and there is a bar under Section 18 of the Atrocity Act to exercise discretion in favor of the present appellants. Learned advocate for the appellants has relied on the decision of the Hon'ble Supreme Court in the case of *Prathvi Raj Chauhan* (Supra) wherein the Hon'ble Supreme Court has clearly stated that concerning the applicability of provisions of section 438 Cr. P.C., 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. Herein, plain reading of the complaint *prima facie* suggest that (i) insult of particular community has been committed by the present appellants and community of the complainant is not in dispute; (ii) offence took place in public in presence of 35 to 50 people and thus, the place of commission of offence is a public place. However, the learned advocate for the appellants pleads ignorance about the knowledge of caste. The said fact is also question of evidence. At this stage, this Court is not required to appreciate the evidence or evaluate the fact.

8. Further, the fact that the present appellants and other co-accused had filed quashing petition being Special Criminal Application No.

10117 of 2023 under Section 482 of the CrPC for quashing of the present complaint was withdrawn vide order dated 25.08.2023 which means that *prima facie* case is made out against the present appellants and question of false complaint or afterthought does not arise and even said fact is also question of evidence. Herein, no case is made out as the appellants are not falsely enroped in the offence.

9. Further, considering the allegations made in the complaint, for the qualitative investigation, presence of appellants is required and custodial interrogation is also necessary. Thus, *prima facie* it appears that accused have played active role and qualitative investigation is necessary in the matter.

10. This court has also kept in mind the law laid down by the Hon'ble Supreme Court in the case of *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694. But, going through the material very carefully available against the accused it appears that herein, no complaint has been made with a view to humiliate or tarnish the image of the present applicant and frivolity is noticed as discussed in the earlier part of the order.

11. As discussed hereinabove, *prima facie* case is made out. The allegation made in the complaint reveals that insult of caste and derogatory words being used by the appellants and as the offence under the provisions of the Atrocity Act is made out, then question of applicability of Section 18 of the Atrocity Act and bar created by section 18 of the Atrocity Act would be attracted. In this regard, reference is required to be made to the decisions in the case of *Shakuntla Devi v. Baljinder Singh*, (2014) 15 SCC 521 and *Vilas Pandurang Pawar v. State Of Maharashtra*, (2012) 8 SCC 795. In these cases, it has been held that when *prima facie* offence under the Atrocity Act is made out, question to grant anticipatory bail does not arise. Herein, specific averments with regard to insult, intimidation are made in the complaint with intent to humiliate the caste. Not only that the complaint of present complainant is not registered within time though he approached the concerned police station at 7 O' Clock and at the instance of the DSP, complaint came to be lodged at late hours and thus, delay is caused. In this regard, affidavits of the witnesses are produced on record. Even, to substantiate the aforesaid fact, the complainant had asked for CCTV footage but same is not provided with a reason that due to technical fault, it is not recorded. Considering the aforesaid fact the provision of special Act cannot be easily brushed aside.

12. The object of anticipatory bail is that person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. In present case, no any such sort of allegation or bias is found out. It is needless to say that order under

Section 438 is not a passport to the commission of trial nor a seal against any serious accusation, which adversely affects the society.

13. Insofar as authorities relied on by the learned advocate for the appellants is concerned, there cannot be any dispute with the settled principle of law as laid down by the Hon'ble Supreme Court in the case of *Prathvi Raj Chauhan* (Supra). The Hon'ble Supreme Court in the said decision has clearly stated that concerning the applicability of provisions of section 438 Cr. P.C., it shall not apply to the cases under the Atrocity Act however, if the complaint does not make out a *prima facie* case for applicability of the provisions of the Atrocity Act, the bar created by section 18 and 18A(i) shall not apply. At this stage, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav*, (2004) 7 SCC 528 wherein it has been held that bail application is to be decided on its own merits. Hence, the decisions relied on by the learned advocate for the appellants in the cases of *Prathvi Raj Chauhan* (Supra); *Kiran Himatlal Gadhavi* (Supra) and *A.K. Chaudhary* (Supra) will not be of any help to the present appellants considering the facts of the case.

14. In wake of above discussion, present is not a fit case to exercise jurisdiction considering bar under Section 18 of the Atrocity Act as *prima facie* involvement of the present appellants in the offence is made out. Hence, present appeal is rejected. Rule is hereby discharged.

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