

HIGH COURT OF GUJARAT

**BECHARBHAI JIVABHAI DHANDHAL (RABARI)
V/S
STATE OF GUJARAT**

Date of Decision: 05 April 2019

Citation: 2019 LawSuit(Guj) 203

Hon'ble Judges: [A P Thaker](#)

Case Type: Criminal Appeal

Case No: 448 of 2019

Subject: Criminal

Acts Referred:

[Indian Penal Code, 1860 Sec 114, Sec 325, Sec 323](#)

[Code Of Criminal Procedure, 1973 Sec 438](#)

[Scheduled Castes And Scheduled Tribes \(Prevention Of Atrocities\) Act, 1989 Sec 14A\(2\), Sec 3\(2\)\(va\)](#)

[Scheduled Castes And The Scheduled Tribes \(Prevention Of Atrocities\) Amendment Act, 2015 Sec 14A\(2\), Sec 3\(2\)\(va\)](#)

[Gujarat Police Act, 1951 Sec 135](#)

Final Decision: Appeal disposed

Advocates: [Dipen K Dave](#), [Sajid Y Kariyaniya](#), [H C L S Committee](#), [Hemant Makwana](#),
[Moxa Thakker](#)

Reference Cases:

[Cases Referred in \(+\): 3](#)

Judgement Text:-

A P Thaker, J

[1] This is an appeal under Section 14(A)(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (hereinafter referred to as "the Atrocity Act" for short) at the instance of the appellant original accused for the anticipatory bail in connection with the FIR being C.R.No. I - 72/2018 registered with Thangadh City Police Station, District: Surendranagar for the offences under Sections 323, 325, 114 of the Indian Penal Code, under Section 135 of the Gujarat Police Act and Section 3(2)(v-a) of the Atrocity Act.

[2] The appellant herein has stated that the impugned FIR has been lodged by the complainant on the allegation that on 09.11.2018 at around 6.00 p.m., all the accused persons were standing nearby water pit situated on opposite side of complainant's agricultural land where the present accused asked the complainant that why he was denying them to unfill the said water pit and after that the present accused told other two accused persons namely Bechar Rana and Sangram Jiva to beat the complainant got fracture on his right arm and fracture on first finger of his left hand and his son namely Pravin also got injuries on his left hand and back.

2.1 It is submitted by the appellant that he had preferred Criminal Misc. Application No.146 of 2019 before the learned Sessions Judge, Surendranagar which came to be rejected by the learned Additional Sessions Judge, Surendranagar vide order dated 19.02.2019.

2.2 It is submitted by the appellant that he is undergoing treatment since December 2016 and he is physically handicapped due to para-paresis and he is innocent and has not committed any offence and the FIR has been lodged after three days of incident without any reason of delay. It is further submitted by the appellant that the complainant has not uttered the accused have used abusive language towards the caste. It is further submitted that there is no particular overt act. It is submitted that the appellant is ready and willing to obey with any condition which may be imposed by this Court while enlarging him on bail.

[3] Heard Mr.Sajid Kariyaniya, learned advocate for the appellant, Ms.Monali Bhatt, learned Additional Public Prosecutor for respondent No.1 and Mr.Hemant Makwana, learned advocate for respondent No.2. I have perused the papers made available by the prosecution as well as annexed with the memo of appeal.

[4] Mr.Sajid Kariyaniya, learned advocate for the appellant has submitted the same facts which are narrated in the memo of appeal and has also submitted that no injury was caused by the appellant and there is no utter of any words towards the caste of the appellant and, therefore, the provision of the Atrocity Act will not be applicable and, therefore, the present appellant may be enlarged on bail as two other accused have also been released on bail by the trial Court.

[5] Per contra, Ms.Monali Bhatt, learned Additional Public Prosecutor for respondent No.1 has vehemently submitted that the other accused were released, after they were arrested and there is no question of any parity for the present accused. It is further submitted that the incident was happened due to instigation of the accused and there are serious injuries caused to the complainant and there is eye witness to support the version of the complainant, but he is son of the complainant. She has submitted that the ingredients of the offence are there and custodial interrogation is required. She has urged to dismiss the present appeal.

[6] Mr.Hemant Makwana, learned advocate for respondent No.2 has adopted the arguments made by learned Additional Public Prosecutor and has submitted that at the time of the incident, the present appellant was present and at his instigation, the entire incident has happened. According to him, after his arrest, the appellant may approach the trial Court and this is not a fit case wherein anticipatory bail may be granted.

[7] In response, Mr.Kariyaniya, learned advocate for the appellant has submitted that there is delay in filing the FIR and the eye witness is complainant's son and the present appellant is physically handicapped and he has not used any weapon in the incident and no active role is played by him in the alleged incident. He has, therefore, urged to allow the present appeal.

[8] This Court has taken into consideration the law laid down by the Apex Court in the case of [Sanjay Chandra Vs. Central Bureau of Investigation](#), 2012 1 SCC 40, [Dr.Subhash Kashinath Mahajan Vs. State of Maharashtra and another](#), 2018 AIR(SC) 1498 and [Gorige Pentaiah Vs. State of Andhra Pradesh and others](#), 2008 12 SCC 531.

[9] Learned advocate for the complainant has heavily relied upon the amended Section 18(A) of the Atrocity Act, which has been added by the legislature by Amendment Act of 2018. The said Section reads as under:-

"18A. (1) For the purposes of this Act,-

(a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or

(b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

(2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court."

9.1 For inserting this new provision of Section 18(A), the statement of objects and reasons thereof is necessary to be carved out. The statement of objects and reasons, which has been appended with the said Bill No.140 of 2018, is as under:-

STATEMENT OF OBJECTS AND REASONS

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (said Act) was enacted with a view to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes and to provide for Special Courts and exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences. The said Act was amended in 2015 with an objective to deliver greater justice to members of the Scheduled Castes and the Scheduled Tribes.

2. In a recent judgment, the Supreme Court has held that a preliminary enquiry shall be conducted by a Deputy Superintendent of Police to find out whether allegations make out a case under the said Act before registering a First Information Report relating to commission of an offence and the approval of an appropriate authority shall be obtained before arrest of any person in connection with such offence.

3. However, the provisions of the Code of Criminal Procedure, 1973 provide that every information relating to commission of an offence, if given, shall be recorded and where the investigating officer has reason to suspect the commission of an offence, he can arrest a person and there is no requirement of conducting a preliminary enquiry before recording of any such information or obtaining of an approval from any authority before arresting any person. Moreover, such preliminary enquiry and approval would only delay the filing of a charge sheet.

4. The principles of criminal jurisprudence and section 41 of the Code of Criminal Procedure, 1973 as interpreted in several judgments, implies that once the investigating officer has reasons to suspect that an offence has been committed, he can arrest an accused. This decision to arrest or not to arrest cannot be taken away from the investigating officer.

5. In view of the above, it is expedient in the public interest that the provisions of the Code of Criminal Procedure, 1973 be made applicable in respect of registration of First Information Report relating to commission of an offence or arrest of any person without any preliminary enquiry or approval of any authority, as the case may be.

6. The Bill seeks to achieve the above objects.

9.2 In view of the statement of objects and reasons for the amendment of the Atrocity Act, it appears that due to the recent judgment of the Supreme Court holding that preliminary inquiry shall be conducted by Deputy Superintendent of Police to find out whether the allegations made out a case under the said

Act before registering an FIR relating to the commission of an offence and approval of appropriate authority shall be obtained before arrest of any person in connection with such offence, this amendment is carried out in the Atrocity Act by inserting Section 18A thereof. It also appears from the statement of objects and reasons coupled with the provisions made in sub-Section (2) of Section 18(A), that this provision of sub-section (2) has been inserted only with a view counter to the directions issued by the Supreme Court in the case of Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra (supra), wherein in conclusion at para 83, the Apex Court has held as under:-

83. Our conclusions are as follows:

i) Proceedings in the present case are clear abuse of process of court and are quashed.

ii) 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. We approve the view taken and approach of the Gujarat High Court in Pankaj D Suthar (supra) and Dr. N.T. Desai (supra) and clarify the judgments of this Court in Balothia (supra) and Manju Devi (supra);

lii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

iv) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.

The above directions are prospective.

9.4 Thus, so far as the conclusion of para 83(i) and (ii) is concerned, there is no object and reason given for nullifying those observations.

9.5 It is also pertinent to note that the Union of India has also preferred review petition against the aforesaid judgment, being Review Petition (Criminal) of 2018 (Diary No.12243 of 2018) in Criminal Appeal No.416 of 2018, wherein, review has been sought for the conclusion at para 83(i) to (v). But, during the course of argument, the Supreme Court has considered only the directions at para (iii) to (v) of the original decision. Thus, even on reading of the amended provision of Section 18(A) coupled with the statement of objects and reasons for such amendment, it is apparent that the legislature has only made this amendment regarding nullifying the conclusion of the Apex Court in para 83(iii) to (v). Therefore, in a given case, no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide, then in that case, there is no absolute bar against grant of anticipatory bail in cases under the Atrocity Act.

[10] On perusal of the FIR, it appears that there is no any prima facie ingredients of the provision of the Atrocity Act. Therefore, the present appellant has not used any weapon in the commission of the offence. Of course, there is allegation that at his instigation, the other two accused have assaulted the present complainant. It also appears from the medical certificate that the present appellant is unable to walk without walker and physically handicapped due to traumatic para paretic. Thus, without discussing the evidence in detail and when there is no prima facie case under the Atrocity Act then the power under Section 438 of the Criminal Procedure Code is available to this Court and considering the factual aspects of the present case, the appeal is required to be allowed. Of course, for interrogation of the appellant by the concerned police, necessary direction can be issued.

[11] In the result, the present appeal is allowed. The impugned order dated 19.02.2019 passed by the learned Additional Sessions Judge, Surendranagar in Criminal Misc. Application No.146 of 2018 is hereby quashed and set aside. It is ordered that in the event of appellant herein being arrested pursuant to FIR registered as C.R.No. I - 72/2018 registered with Thangadh City Police Station, District: Surendranagar, the appellant shall be released on bail on furnishing a personal bond of Rs. 15,000/- (Rupees Fifteen Thousand only) with one surety of like amount on the following conditions that the appellants shall :

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

(b) remain present at concerned Police Station on 12.04.2019 between 11.00 a.m. and 2.00 p.m.;

(c) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade from disclosing such facts to the court or to any police officer;

(d) 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) at the time of execution of bond, furnish his address to the investigating officer and the court concerned and shall not change residence till the final disposal of the case till further orders;

(f) not leave India without the permission of the Court and if having passports 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 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 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.

[13] 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.

[14] The appeal stands disposed of, accordingly. Direct service is permitted.

