

Yunus Khan Hayat Khan Malek vs State Of Gujarat on 18 February, 2019

Author: S.H.Vora

Bench: S.H.Vora

R/CR.A/309/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 309 of 2019

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YUNUSKHAN HAYATKHAN MALEK

Versus

STATE OF GUJARAT

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Appearance:

MR DIPEN K DAVE(3296) for the PETITIONER(s) No. 1

SAJID Y KARIYANIYA(9619) for the PETITIONER(s) No. 1

MR GIRISH D CHAVDA(3226) for the RESPONDENT(s) No. 2

MR KAUSHIK D CHAVDA(6657) for the RESPONDENT(s) No. 2

MR PRANAV TRIVEDI APP (2) for the RESPONDENT(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE S.H.VORA

Date : 18/02/2019

ORAL ORDER

1. It is a matter of practice of the Registry of this Court not to show the name of the learned advocate appearing for respondent No.2 - complainant, more particularly, in the matters filed under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, 1989. The Additional Registrar (Legal, Law and Inquiry) (To work as required and entrusted by the Registrar (Judicial), to look into the matter and furnish the explanation for non- mentioning/non-showing the status of respondent No.2 - complainant despite various orders passed by this Court on this aspect from time to time.

2. Admit. The learned A.P.P. waives service of notice of admission for the respondent - State and learned advocate Mr.G.D. Chavda waives service of notice of admission for respondent No.2 - complainant.

R/CR.A/309/2019 ORDER

3. Vide order dated 31.01.2019 passed by the learned 7th Additional Sessions Judge, Ahmedabad (Rural) at Viramgam in Criminal Misc. Application No.25 of 2019, the learned trial Judge has rejected the application of the appellant filed u/s 438 of the Code of Criminal Procedure, 1973 to enlarge the appellant on anticipatory bail in the event of his arrest on account of offence being registered vide C.R.No.II-77 of 2018 with Viramgam-Rural Police Station, Ahmedabad for the offences punishable under Sections 323, 504, 506(2) and 114 of the Indian Penal Code and under Sections 3(2)(5-a) and 3(1) (R)(S) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, 1989 (for short, the 'Atrocity Act').

4. Feeling aggrieved by the said order, the appellant preferred said appeal u/s 14A(2) of the Atrocity Act.

5. Brief facts as stated in the FIR in sum and substance are like this:-

5.1. It is alleged that on 01.08.2018 in front of Asopalav hotel near Hansalpur cross road, all the accused persons stopped the complainant and asked him the reason for not resolving dispute of civil suit filed in Viramgam Court and they abused him and when the complainant tried to stop them, present appellant slapped him and all the three accused persons used abusive language towards caste of the complainant and threatened him. Thus, present complaint came to be lodged.

6. Having heard submissions made at bar by the learned advocate for the appellant, learned advocate Mr.G.D. Chavda for respondent No.2 - complainant and the learned A.P.P. as well as considering the police papers supplied by the learned R/CR.A/309/2019 ORDER A.P.P. during the course of hearing, it appears that the alleged offence took place on 01.08.2018 whereas, the complaint filed on 10.08.2018, no any past antecedent is registered against the appellant and there exists civil dispute between the parties. The learned advocate for respondent No.2 -

complainant would submit that if the appellant is granted anticipatory bail, in that event, suitable condition not to enter into the limits of Village:Vanthal, Taluka: Viramgam may be imposed. The Court is not in agreement with such condition since the issue of possession with regard to the land is subject matter of the civil suit/appeal and there is no any medical evidence on record. However, it is legal requirement on the part of the respondent No.2 - complainant to aver that the appellant is not the member of the Scheduled Caste or Scheduled Tribe for invoking provisions of section 3 of the Atrocity Act. In similar circumstances, in Gorige Pentaiah Vs. State of Andhra Pradesh and others reported in (2008) 12 SCC 531, the FIR itself was quashed.

7. Similarly, learned advocate appearing for the respondent No.2 placed reliance on the amended provision u/s 18A so as to contend that section 438 of the Code would not apply to a case under Atrocity Act. In case on hand, when required mandatory averments are missing in the F.I.R. itself, it is doubtful whether provisions of Atrocity Act would come into play and, therefore, amended provisions u/s 18A will not help the respondent No.2.

8. In the result, present criminal appeal is allowed and the impugned order dated 31.01.2019 passed by the learned 7th Additional Sessions Judge, Ahmedabad (Rural) at Viramgam in Criminal Misc. Application No.25 of 2019 is hereby quashed R/CR.A/309/2019 ORDER and set aside. The appellant is ordered to be enlarged on bail in the event of his arrest on furnishing a bond of Rs.10,000/- with surety of like amount on the following condition that the appellant shall:-

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

(b) 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;

(c) not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

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

(e) 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;

9. Despite this order, it would be open for the Investigating Agency to apply to the competent Court, for police remand of the appellant. The appellant shall remain present before the competent Court on the first date of hearing of such application and on all subsequent occasions, as may be directed by the competent Court. This would be sufficient to R/CR.A/309/2019 ORDER 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 appellant to seek stay against an order of remand, if, ultimately, granted and the power of the competent Court 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.

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

Direct service is permitted.

(S.H.VORA, J.) Hitesh