

Kaminiben Nitinbhai Rajput vs State Of Gujarat on 9 April, 2019

Author: A. P. Thaker

Bench: A. P. Thaker

R/CR.A/679/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 679 of 2019

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KAMINIBEN NITINBHAI RAJPUT

Versus

STATE OF GUJARAT

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Appearance:

C J GOGDA(7488) for the Appellant(s) No. 1,2

MR AV NAIR(5602) for the Appellant(s) No. 1,2

MR RAJABHAI J GOGDA(3628) for the Appellant(s) No. 1,2

VIKAS V NAIR(7444) for the Appellant(s) No. 1,2

MR NIMESH M PATEL(6780) for the Opponent(s)/Respondent(s) No. 2

MR. MAULIK M SONI(7249) for the Opponent(s)/Respondent(s) No. 2

MS.MONALI BHATT, APP (2) for the Opponent(s)/Respondent(s) No. 1

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CORAM: HONOURABLE DR.JUSTICE A. P. THAKER

Date : 09/04/2019

ORAL ORDER

1. By way of this appeal filed under Section 14A(2) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellants' original accused nos.2 and 3 have prayed to release them on anticipatory bail, in the event of their arrest, in connection with the FIR registered as C.R.No.I 20 of 2019 with Vejalpur Police Station, District Ahmedabad (Rural) for the offences punishable under sections 306, 498A and 114 of the Indian Penal Code, 1860 ("IPC" for short), Sections 3 and 7 of the Dowry Prohibition Act, 1961 and Section 3(2)(v), 3(1)(r) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Atrocities Act" for short).

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2. The appellants herein had approached learned 12th (ad hoc) Additional Sessions Judge, Ahmedabad (Rural), Ahmedabad for being released on anticipatory bail by filing Criminal Misc.

Application No.819 of 2019, which came to be rejected by the impugned judgment and order dated 14.03.2019. Being aggrieved by the aforesaid order, present appeal is preferred before this Court.

3. The brief facts leading to filing of present application are as under: 3.1 The respondent no.2 herein original complainant has filed the impugned FIR on 28.02.2019 alleging that her deceased daughter Sonal was married with original accused no.1 Ankit Rajput and during her short span of marriage life, she was subjected to physical and mental harassment by her husband and present appellants. It is alleged in the FIR that they were demanding dowry from her. It is alleged that because of harassment caused by the accused, she has committed suicide.

4. Mr.A.V.Nair, learned advocate for the appellants has submitted that the appellants are innocent and have not committed any offence as alleged in the FIR and there is no prima facie material to show that the incident was occurred merely on account of deceased being a member of Scheduled Caste and Scheduled Tribe. He has contended that the deceased has love affair with her husband viz. Ankit Rajput original R/CR.A/679/2019 ORDER accused no.1, who is son of the appellant no.2 and brother of the appellant no.1.

4.1 Learned advocate for the appellants has submitted that due to love marriage of the deceased with original accused no.1 Ankit Rajput, the complainant was not happy and with a view to take revenge, the impugned FIR involving present appellants has been filed though they have not participated in the crime.

4.2 Learned advocate for the appellants has submitted that appellant no.1 is married and residing separately with her husband and had no such specific occasion to visit her matrimonial home where the deceased committed suicide.

4.3 Learned advocate for the appellants has submitted that appellant no.2 being a old woman, suffering from depression since years and she has not committed any offence alleged against her.

4.4 Learned advocate for the appellants has submitted that from the bare perusal of the FIR, it is evident that the appellants herein have not committed any scheduled offence of IPC, which is mandatory for invoking provisions of Atrocities Act against the present appellants.

4.5 Learned advocate for the appellants has submitted that there is no ingredient of commission of offences charged against the present appellants.

He has referred to various documentary evidence

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produced before this Court and relied upon various judgments of the Apex Court as well as this Court. He has submitted that Section 18 of the Atrocities Act would not be applicable to this case and the amendment carried out in the Amendment Act is only qua the directions of the Apex Court to the preliminary inquiry conducted before arrest. He has further submitted that in view of the decision of the Apex Court in the case of Dr.Subhash Kashinath Mahajan Vs. State of Maharashtra, passed in Criminal Appeal No.416 of 2018 dated 20.03.2018, present appellants are entitled to be released on anticipatory bail pending the investigation and trial and the amended Section 18 of the Atrocities Act would not be applicable in the facts of the present case.

4.6 Learned advocate for the appellants submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. Besides, the appellants are available during the course of investigation and will not flee from justice. In view of the above, the appellants may be granted anticipatory bail.

4.7 Learned advocate for the appellants on instructions states that the appellants are ready and willing to abide by all the conditions which may be imposed by this Court while enlarging them on bail.

5. Per contra, Ms.Monali Bhatt, learned APP for the R/CR.A/679/2019 ORDER respondent□State has submitted that deceased has committed suicide during short span of marriage life, and therefore, presumption under Section 113 of the Indian Evidence Act, 1872 is required to be drawn. There are statements of neighbors with whom the deceased used to talk. From their statements, it is transpired that present appellants were also harassing the deceased. It is also contended that though the complainant has filed affidavit in support of the accused, it is a duty of the State to see that the accused may be punished for such offences. Therefore, she has prayed that present appeal may be rejected.

5.1 Learned APP has relied upon the decision of Apex Court in the case of Ashabai Machindra Adhagale Vs. State of Maharashtra & Ors., reported in (2009) 3 SCC 789 for the proposition that during investigation or at the time of framing charge or at the time of trial, it is open to the accused to show that he either belongs to Scheduled Caste or Scheduled Tribe so that applicability of Section 3(1)(xi) of the Act is ruled out.

6. Mr.Maulik Soni, learned advocate for the respondent no.2□Original complainant has submitted that the complaint has filed her affidavit contending that the impugned FIR was registered by her as per her oral information, in haste, without understanding the legal consequence, as she was emotionally hurt due to the sudden death of her daughter. She has R/CR.A/679/2019 ORDER further stated that after the registration of the impugned FIR, she realized that the impugned FIR was filed in haste and after having consulted with husband and relatives; she do not intend to further pursue with the proceedings of the impugned FIR qua the appellants herein and she do not have any objection, if the appellants herein are released on anticipatory bail, as prayed for in the present appeal.

7. In view of the submissions made by the learned advocate for the respondent no.2□original complainant, Mr.Nair, learned advocate for the appellants has submitted that possibility of the false implication cannot be ruled out. He has submitted that the appellant no.1 is residing separately and there was love affair between the deceased and her husband□original accused no.1□Ankit Rajput which was not liked by the complainant, and therefore, there was no question of demanding dowry from the deceased by her husband.

8. Heard Mr.A.V.Nair, learned advocate for the appellants, Ms.Monali Bhatt, learned APP for the respondent□State and Mr.Maulik Soni, learned advocate for the respondent no.2□original complainant and perused the material available on record.

9. On Perusal of the decision of the Apex Court in the case of Ashabai (supra) on which learned APP has placed reliance, it is found in the FIR that the caste of the accused was not mentioned and on that R/CR.A/679/2019 ORDER basis, the High Court had quashed the petition, which was appealed to the Apex Court, wherein the Apex Court has observed that FIR is not expected to be encyclopedia. After ascertaining the facts during the course of investigation, it is open to the investigating officer to record that the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe. After final opinion is formed, it is open to the Court to either accept the same or take cognizance. Even if charge is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the Court that the materials do not show that the accused does not belong to Scheduled Caste or Schedule Tribe. Even if charge is framed at the time of trial, materials can be placed to show that the accused either belongs or does not belong to Scheduled Caste or Scheduled Tribe.

10. 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 reported in (2012) 1 SCC 40, Dr.Subhash Kashinath Mahajan Vs. State of Maharashtra and another reported in AIR 2018 SC 1498 and Gorige Pentaiah Vs. State of Andhra Pradesh and others reported in (2008) 12 SCC 531.

10.1 Learned APP 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.

R/CR.A/679/2019 ORDER 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."

10.2 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 R/CR.A/679/2019 ORDER 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 R/CR.A/679/2019 ORDER authority, as the case may be.

6. The Bill seeks to achieve the above objects.

10.3 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 R/CR.A/679/2019 ORDER 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);
- iii) 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. "

10.4 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.

10.5 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 R/CR.A/679/2019 ORDER 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.

11. Considering the settled proposition of law coupled with the facts of present case, it prima facie appears that there was love affair between the deceased and her husband Ankit Rajput due to which

they have got married and this fact was not disclosed by the deceased for five months to the complainant. The complainant has filed affidavit contending that she do not have any objection, if the appellants herein are released on anticipatory bail, as prayed for in the present appeal, but it is the duty of the State to oppose the bail to see that appellants' original accused herein are punished. It is well settled law that unless and until it is proved beyond reasonable doubt that the person has committed any offence, he is considered to be innocent. However, at the stage of considering the R/CR.A/679/2019 ORDER bail application, punishing accused may be irrelevant.

12. Considering the facts and circumstances of the case, without entering into evidence on record, this Court finds that this is a fit case, wherein discretion under Section 438 of the Code is required to be exercised, as there is no prima facie case against the present appellants' accused.

13. In the result, the present application is allowed and the impugned order dated 14.03.2019 passed in Criminal Misc. Application No.819 of 2019, by the learned 12th (ad hoc) Additional Sessions Judge, Ahmedabad (Rural), Ahmedabad, is quashed and set aside and it is directed that in the event of appellants herein being arrested pursuant to FIR registered as C.R.No.I 20 of 2019 with Vejapur Police Station, Dist:Ahmedabad (Rural), the appellants shall be released on bail on furnishing a personal bond of Rs. 10,000/-(Rupees ten thousand only) each with one surety of like amount on the following conditions:

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

(b) shall remain present at concerned Police Station on 16.04.2019 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 R/CR.A/679/2019 ORDER to dissuade him 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 their addresses 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 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;

14. 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. 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 R/CR.A/679/2019 ORDER 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.

15. 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.

16. Accordingly, this appeal is allowed. Direct service is permitted.

(A. P. THAKER, J) GIRISH