

# Anita Bhagmal Sangar vs State Of Gujarat on 1 February, 2024

NEUTRAL

R/CR.A/2826/2023

CAV ORDER DATED: 01/02/2024

undefin

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (REGULAR BAIL - AFTER CHARGESHEET) NO.  
2826 of 2023

=====

A N I T A   B H A G M A L   S A N G A R   V e r s u s   S T A T E   O F   G U J A R A T

===== Appearance:

MR SI NANA VATY SENIOR ADVOCATE WITH MR VANDAN K BAXI(5863)  
NANA VATI & NANA VATI(1933) for the Appellant(s) No. 1 MR HARDIK A  
DAVE(3764) for the Opponent(s)/Respondent(s) No. 2 MS AV PATEL APP for the  
O p p o n e n t ( s ) / R e s p o n d e n t ( s )   N o .   1

=====

CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI Date : 01/02/2024 CAV  
ORDER

1. Admit. Learned A.P.P. waives service of notice of admission for the respondent -  
State and Mr.H A Dave waives service of notice of admission for private respondent.

2. By way of the present appeal under Section 14-A(2) of the Scheduled Castes and  
Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, the 'Act, 1989')., the  
appellant - original accused challenges the order dated 05/12/2023 passed in CR.MA  
No.1758 of 2023 by the learned 3rd Additional Sessions Judge, Gandhinagar,  
whereby, the learned Court below refused to grant regular bail under Section 439 of  
the Code of Criminal Procedure to the appellant in connection with the F.I.R. being  
CR No.11191008230553 of 2023 registered with Chandkheda Police NEUTRAL  
CITATION R/CR.A/2826/2023 CAV ORDER DATED: 01/02/2024 undefined  
Station for the offence punishable under Sections 304(b), 306, 498 and 114 of the  
Indian Penal Code and under sections 3(2)(5) and 3(2)(5-a) of the Act.

3. Heard learned Senior Advocate Mr.S I Nanavaty with Mr.Baxi, learned Advocate for the appellant and learned Advocate Mr.Hardik A Dave for the first informant and learned APP Ms. AV Patel for respondent - State.

4. Learned Senior Advocate for the appellant - accused would submit that petitioner is a lady accused aged about 54 years and behind the bars since 06/09/2023. Learned Senior Advocate for the appellant would further submit that the investigation is over and charge-sheet is filed. Learned Senior Advocate for the appellant would further submit that appellant is the mother-in-

law of the deceased; whereas father-in-law is granted regular bail by learned Court below. Learned Senior Advocate for the appellant would further submit that going through the FIR prima facie, the general allegations of wear and tear are made against the appellant and no active allegations of throwing words taunting the deceased or extending physical and mental cruelty are levelled against the petitioner. Learned Senior Advocate for the appellant would further submit that on plain reading of FIR, it does not indicate allegation of demand of dowry and providing mental and physical harassment; whereas the said allegations are against the husband of the deceased. Learned Senior Advocate for the appellant would further submit that FIR does not attribute any act of instigating the deceased to commit suicide at the hands of the petitioner. Learned Senior Advocate NEUTRAL CITATION R/CR.A/2826/2023 CAV ORDER DATED: 01/02/2024 undefined for the appellant would further submit that since the investigation is over and charge-sheet is filed, all the evidence are in the custody of the IO and therefore there are no chance of hampering or tampering with the evidence and the trial may take its own time. Thus, considering the material on record, no direct role is attributed to the appellant and therefore she may be released on regular bail.

4.1 Learned Senior Advocate for the appellant would further submit that insofar as the allegations under the Atrocities Act are concerned, the FIR does not indicate that the accused uttered the words humiliating the caste of the complainant and thus prima facie no offence under the Atrocities Act is made out.

4.2 By making above submissions, Learned Senior Advocate for the appellant would submit to allow this application.

5. On the other hand, learned Advocate Mr.Hardik Dave appearing for the first informant would submit that reading of the charge-sheet papers would prima facie indicate the role of present appellant-accused. Learned Advocate for the org. complainant has submitted that deceased was habitual in writing her diary and by pointing out few pages there-from which is part of charge-sheet papers, it is sought to be submitted that deceased had clearly narrated that deceased was mentally harassed by the petitioner. He would further submit that instigation to commit suicide may not be a single act; but it may be continuous. In the present case, the deceased was maintaining the diary which indicates that she was constantly and cumulatively harassed by the petitioner and as she could not bear such harassment as well as demand of dowry one after NEUTRAL CITATION R/CR.A/2826/2023 CAV ORDER DATED: 01/02/2024 undefined another, she committed suicide. He would submit that once the car and gold ornaments were given, persistent to demand of dowry,

the petitioner was demanding flat for separate living of her son and decease.

5.1 Learned Advocate Mr.Hardik Dave would further submit that WhasApp chatting of the deceased with her friend is recovered during investigation which is also part of charge-sheet papers whereby she has stated that, "if ever I commit suicide The sole reason is Aditya sanger and his mother. " Thus, this itself shows that she was fed up with her husband as well as petitioner and thus she committed the suicide. He would further submit that since the investigation is over, the IO comes to the conclusion that prima facie offence under Section 304-B of the IPC is attracted read with Section 306 of the IPC and hence filed charge-sheet for both the offence and thus looking to the gravity of offence, the appellant may not be enlarged on bail.

5.2 Learned Advocate Mr.Dave has placed reliance upon a decision of Hon'ble Apex Court in case of Meera vs. State by the Inspector of Police Thiruvotriyur Police Station, Chennai [(2022) 3 SCC 93] and placed reliance upon paragraph 8; relevant part thereof is reproduced herein below.

".....Being a lady, the appellant, who was the mother-in- law, ought to have been more sensitive vis-à-vis her daughter-in-law. When an offence has been committed by a woman by meting out cruelty to another woman, i.e., the daughter-in-law, it becomes a more serious offence. If a lady, i.e., the mother-in-law herein does not protect NEUTRAL CITATION R/CR.A/2826/2023 CAV ORDER DATED: 01/02/2024 undefined another lady, the other lady, i.e., daughter-in-law would become vulnerable. ...."

5.3 He would submit that since the marriage span is of four months and offence alleged against accused are under Section 306 and 304-B of the IPC, presumption under Section 113-A and 113-B of the Evidence Act is also available against the accused and therefore considering the mental harassment meted to deceased and continuous demand of the dowry resulted into death of newly wedded bride, petitioner may not be enlarged on bail.

6. Learned APP would object in granting of bail to the appellant-accused inter-alia on the ground that filing of charge- sheet is not sufficient to grant bail; but on the contrary, it will strengthen the charge against the accused. While adopting the submissions of learned Advocate for the first informant, she would further submit that appellant is involved in the crime against the society which is day-in-day out increasing and therefore no case is made out for grant of bail.

7. Having heard learned Advocates appearing for the respective parties and considering the well famous parameters for grant or refusal of bail i.e. balancing personal liberty and investigational power of police; freedom of individual vis-a-vis security of State; and balance between individual liberty and interest of society etc., alongwith nature of accusation, nature of evidence in support of the accusation; severity of the punishment which conviction will entail; I am inclined to exercise the discretion in favour of the appellant-accused inter NEUTRAL CITATION R/CR.A/2826/2023 CAV ORDER DATED: 01/02/2024 undefined alia on the ground that appellant-accused is a lady accused and prima-facie no direct role has been alleged against her.

8. It also appears that appellant is behind bars since last five months. What further appears that though allegations of mental and physical harassment are levelled against the appellant; but no specific incident is reported and no specific words are stated in the FIR. All the allegations are against the husband and general allegations are levelled against the petitioner. The WhatsApp chatting between the deceased and her friend also pressed into service; but no such specific incident is attributed to the present petitioner as to what kind of instigation was done by petitioner which prompted the deceased to commit suicide; neither any such reason is discerned from the said chatting. Same way the diary maintained by the deceased also does not disclose any reason attributing the petitioner to instigate the deceased to commit suicide. Of course, all these aspects can be looked at the time of trial; subject to they being proved; but at this juncture while deciding bail application, it would not come in the way. Merely stating that harassment was provided by the petitioner in absence of specific incident would not be sufficient to deny bail to the appellant. Thus, the present appeal deserves consideration.

9. Insofar as the reliance placed upon the decision of the Hon'ble Apex Court in case of Meera (supra) is concerned, no such specific allegations are coming out from the FIR against the appellant indicating the reasons and therefore the said ratio would not be applicable to the facts of the present case.

10. At this juncture, this Court may recollect the law laid down NEUTRAL CITATION R/CR.A/2826/2023 CAV ORDER DATED: 01/02/2024 undefined in the case of State of Rajasthan vs. Balchand [AIR 1977 SC 244] which reads thus:

"The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences of intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the court. We do not intend to be exhaustive but only illustrative."

11. A useful reference can also be made to the decision of the Hon'ble Apex Court in case of Jagjeet Singh vs. Ashish Mishra (2022) 9 SCC 321, reiterated and approved the factors to be considered for grant of bail as was laid down in the case of Prasanta Kumar Sarkar vs. Ashis Chatterjee (2010) 14 SCC 496 in para 9 thereof:

"9. ... However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this 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 face 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;

NEUTRAL CITATION R/CR.A/2826/2023 CAV ORDER DATED: 01/02/2024 undefined

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail."

12. Thus, the present appeal deserves consideration.

13. In the result, the present appeal is allowed. The Impugned order dated 05/12/2023 passed in CR.MA No.1758 of 2023 by the learned 3rd Additional Sessions Judge, Gandhinagar is hereby quashed and set aside. The appellant is ordered to be released on bail in connection with the F.I.R. being CR No.11191008230553 of 2023 registered with Chandkheda Police Station on executing bond of Rs.10,000/- (Rupees Ten Thousand only) with one surety of 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] not to leave limits of State of Gujarat without prior permission of the Sessions Judge concerned;

[d] appear before the Investigation Officer concerned, as and when required for investigation purpose and attend Court concerned regularly.

[e] furnish the present address of residence along with the proof and mobile number to the I.O. concerned and also to the Court at the time of execution of the bond and shall not change the residence and mobile number without prior permission of Sessions Court concerned;

NEUTRAL CITATION R/CR.A/2826/2023 CAV ORDER DATED: 01/02/2024 undefined

14. The competent authority will release the appellant only if he is not required in connection with any other offence for the time being.

15. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to take appropriate action in the matter.

16. Bail bond to be executed before the lower court having jurisdiction to try the case. It will be open to the concerned Court to delete, modify or relax any of the above conditions in accordance with law.

17. At the trial, the trial court shall not be influenced by the observations of preliminary nature, qua the evidence at this stage, made by this Court while enlarging the appellant on bail.

The appeal succeeds. Direct service is permitted.

(J. C. DOSHI,J) sompura