

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL (FOR ANTICIPATORY BAIL) NO. 516 of 2024****With****R/CRIMINAL APPEAL NO. 2811 of 2023**

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POONAM ANSHUL SINGH D/O. JAGDISHBHAI MOTIBHAI LIMBACHIYA

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR RAMNANDAN SINGH(1126) for the Appellant(s) No. 1

for the Opponent(s)/Respondent(s) No. 2

MR HK PATEL, ADDL. PUBLIC PROSECUTOR for the

Opponent(s)/Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI**Date : 07/03/2024****ORAL ORDER**

1. The present appeals are filed under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act") read with Section 438 of the Code of Criminal Procedure, 1973, the appellants accused have prayed to release him on anticipatory bail in the event of their arrest in connection with the FIR being C.R. No.11196003230874 with **Manjalpur Police Station**.

2. Learned advocate for the appellants submits that considering the nature of allegations, role attributed to the appellants, the appellants may be enlarged on anticipatory bail by imposing suitable conditions.

3. Learned advocate for the complainant as well as learned

Additional Public Prosecutor appearing on behalf of the respondent-State would submit that looking to the nature and gravity of the offence.

4. Heard the learned Advocates for the respective parties and perused the papers.

5. Having heard the learned counsel for the parties and perusing the record of the case and taking into consideration the facts of the case, nature of allegations, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to exercise discretion in favour of the appellants for the following reasons : -

(1) Even if, FIR is taken as gospel truth, no ingredients of sections 107 or 306 of the IPC are made out.

(2) Though there is a suicide note, but in the suicide note, no such allegations are levelled against the petitioners. Moreover, the FIR is delayed by three months.

(3) Learned advocate for the petitioner assures the Court that the applicant will cooperative with the investigation, as and when presence of the applicant is required.

(4) In case of Kumar @ Shiva Kumar Vs. State of Karnataka reported in 2024 AIJEL SC 73335, the Hon'ble Apex Court has held in para 47 as under:-

“Human mind is an enigma. It is well neigh impossible to unravel the mystery of the human mind. There can be myriad reasons for a man or a woman to commit or attempt to commit 43 suicide: it may be a case of failure to achieve academic excellence, oppressive environment in college or hostel, particularly for students belonging

to the marginalized sections, joblessness, financial difficulties, disappointment in love or marriage, acute or chronic ailments, depression, so on and so forth. Therefore, it may not always be the case that someone has to abet commission of suicide. Circumstances surrounding the deceased in which he finds himself are relevant.”

(5) In case of Kashibai and others Vs. State of Karnataka reported in 2023(11) Scale 214, wherein the Hon’ble Apex Court in para 10 to 12 held thus:-

“10. In view of the above, it is quite clear that in order to bring the case within the purview of 'Abetment' under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused. For the purpose proving the charge under Section 306 IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.

11. So far as facts of the present case are concerned, the prosecution had sought to lead the evidence by examining the witnesses to prove that the deceased had committed suicide because of the mental and physical harassment of the appellants-accused. The PW-21 Dr. Jayashree Masali, who had carried out the post-mortem of the deceased, had narrated in her deposition the injuries found on the body of the deceased as mentioned in the post-mortem report (Exhibit-14). As per her final opinion, the cause of death was "due to drowning as a result of Asphyxia". It may be noted that nothing comes out from her evidence as to whether the death was suicidal or not. The PW-1 Annapurna Limbikai, who happened to be the mother though had alleged in her examination-in-chief that her daughter was murdered by the accused by throwing her in the well, she had admitted that when she reached at the spot, she had not seen the dead body of her daughter in the well. She had also admitted that she had not stated in her complaint that her daughter had committed suicide by jumping into the well on account of the mental and physical harassment caused by the accused. At this juncture she was declared hostile, and the public prosecutor was permitted to cross examine her. In the cross-examination she had stated that she did not remember the incident as it had occurred long back. In the further cross-examination by the learned advocate for the accused she had admitted that the accused no. 3 had informed her on telephone that her daughter-Jayashree had accidentally slipped, and as a result thereof she fell down in the well at about 12.00 O'clock. She also stated that when she, her husband, other relatives and the neighbours went to the place of occurrence at

about 4.30 p.m., they had not seen the dead body floating in the well.

12. PW-4 Sadashiv Limbikai, the father of the deceased also had stated in his evidence before the Court that he did not know whether her daughter- Jayashree had committed suicide, or the accused had thrown her body into the well. PW-5 Rudrangouda Patil who was instrumental in arranging the marriage of the deceased with accused no. 3, had stated that he did not know how Jayashree had fallen down into the well. PW-6 Gangappa Limibikai, who happened to be the uncle of the deceased also had no knowledge as to how the deceased fell down in the well. In the cross-examination, he had admitted that when the dead body was taken out from the well, all the four accused were present near the well. In short, none of the witnesses examined by the prosecution had any knowledge as to whether the deceased had jumped into the well or she had accidentally slipped into the well.”

6. In above consideration, the appellants have made out prima facie case to get the anticipatory bail. This Court is conscious that statutory bar is operating while granting anticipatory bail under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. But looking to the above reasons along with prima facie case, nature and gravity of the accusation and severity of the punishment as well as absence of flight-risk character, behaviour, means and position of the accused as well as non-likelihood of the offence being repeated and taking assistance of the judgment of the Hon'ble Apex Court in the case of **Prithviraj Chauhan vs Union of India**, reported in (2020) 4 SCC 727, this is a fit case to exercise jurisdiction. The relevant para is para 11, 32 and 33, which reads as under:-

“11. Concerning the applicability of provisions of Section 438 CrPC, it shall not apply to the cases under the 1989 Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act, the bar created by Sections 18 and 18-A(i) shall not apply. We have clarified this aspect while deciding the review petitions.

32. As far as the provision of Section 18 - A and anticipatory bail is concerned, the judgment of Mishra, J. has stated that in cases where no prima facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail.

33. I would only add a caveat with the observation and emphasise that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament.”

7. Considering the aforesaid aspects and the law laid down by the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors.** reported in (2011) 1 SCC 6941, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of **Shri Gurubaksh Singh Sibbia & Ors.** reported in (1980) 2 SCC 665 and also the decision in the case of **Sushila Aggarwal v. State (NCT of Delhi)** reported in (2020) 5 SCC 1, I am inclined to allow the present appeal.

8. In the result, the present appeals are allowed by directing that in the event of appellants herein being arrested in connection with the FIR being **C.R. No.11196003230874** with **Manjalpur Police Station**, 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 that they:

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

(b) shall remain present at the concerned Police Station on 19.3.2024 and 20.3.2024 between 11.00 a.m. and 1.00 p.m. and the IO shall ensure that no unnecessary harassment or inconvenience is caused to the appellants;

(c) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as 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 the address to the investigating officer and the court concerned and shall not change their 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.

9. 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. It is needless to say, the observations made hereinabove are only tentative in nature and the trial Court shall not be influenced by the aforesaid observation.

Direct service is permitted.

SHEKHAR P. BARVE

(J. C. DOSHI,J)