

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL (FOR ANTICIPATORY BAIL) NO. 2774 of 2023**

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CHAUDHARI PIYUSHBHAI HEMRAJBHAI & ANR. CHAUDHARI
PIYUSHBHAI HEMRAJBHAI

Versus

STATE OF GUJARAT STATE OF GUJARAT & ANR.

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Appearance:

MR. KIRIT R CHAUDHARI(3745) for the Appellant(s) No. 1,2
HCLS COMMITTEE(4998) for the Opponent(s)/Respondent(s) No. 2
MR PV PATADIYA(5924) for the Opponent(s)/Respondent(s) No. 2
MS ASMITA PATEL, ADDL. PUBLIC PROSECUTOR for the
Opponent(s)/Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 22/02/2024

ORAL ORDER

1. The present appeal is 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.11206073230584 with Vadnagar 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 and learned

Additional Public Prosecutor appearing on behalf of the respondent-State would submit that looking to the nature and gravity of the offence. Upon such submissions, he prays to dismiss the appeal.

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) There is a private dispute between the parties regarding right of way and this private civil dispute has been given cloak of criminality.

(2) From reading of the FIR on its face does not indicate any intention on the part of the appellants to lower down or hamper the complainant regarding his caste.

(4) The case is otherwise for offence punishable u/s 504 and 506(1) of the IPC and none of the offences have maximum punishment of more than seven years. Thus, in that circumstances, guidelines issued in the case of Arnesh Kumar v/s. State of Bihar [(2003 (8) SCC 273] reiterated in the case of Md. Asfak Alam Vs. The State of Jharkhand and another reported in 2023 INSC 660 and pursuant to which, Circular No.C.2703/81 issued by this Court shall be followed.

(5) Even, after considering what is stated in the FIR alleged to have attracted the offence under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, and it does not constitute casteist slur and derogated to a particular caste or said to have been spoken into public place.

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 appeal is allowed by directing that in the event of appellants herein being arrested in connection with the FIR being **C.R. No.11206073230584** with **Vadnagar 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 15.3.2024 and 16.3.2024 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.

(J. C. DOSHI,J)

SHEKHAR P. BARVE