

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL (FOR ANTICIPATORY BAIL) NO. 1728 of 2023**

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RAMDEVSINH MAHIPATSINH JADEJA
Versus
STATE OF GUJARAT

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Appearance:

MR ASHISH M DAGLI(2203) for the Appellant(s) No. 1
MR VISHAL V CHAVDA(11929) for the Opponent(s)/Respondent(s) No. 2
PRASHANT V CHAVDA(8510) for the Opponent(s)/Respondent(s) No. 2
MR LB DABHI, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 29/09/2023****ORAL ORDER**

[1.0] Present appeal under Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Atrocity Act") challenging the order dated 26.06.2023 passed by the learned 8th Additional Sessions Judge, Anjar-Kachchh in Criminal Misc. Application No.198 of 2023 whereby the learned Judge rejected the application filed by the present appellant under Section 438 of the Code of Criminal Procedure, 1973 seeking anticipatory bail in connection with FIR being **C.R. No.11993014230060 of 2023 registered with Dudhai Police Station, Kachchh (East), Gandhidham**, for the offences punishable under Sections 294 (b), 506 (2) and 114 of the Indian Penal Code, 1860 and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocity Act.

[2.0] Though matter was taken up for hearing on 25.8.2023, nobody was present on behalf of respondent no.2. Today also,

nobody is present on behalf of respondent no.2. Heard learned advocate Mr.Dagli for the appellant and learned APP for the respondent-State.

[3.0] Learned advocate for the appellant submitted that the appellant is not involved in commission of offence as alleged in the FIR and has been falsely enroped in the alleged offence. The complainant is in habit of filing this type of complaints with same witnesses. He submits that the complainant wants to pressurize the appellant and Deputy Sarpanch of Gram Panchayat to put signature on some papers so that land could be allotted to him. That when the complainant was going to his residence on 1.4.2023, the accused have used derogatory language and insulted the complainant. He submits that nothing is required to be recovered or discovered from present accused. Therefore, looking to the case of the appellant and nature of the allegations, the appellant is required to be granted anticipatory bail by imposing suitable terms and conditions.

[4.0] *Per contra*, learned APP appearing for the respondent – State has vehemently opposed the present appeal and stated that there is no provision to entertain an appeal seeking anticipatory bail and hence, he has requested to dismiss the present appeal.

[5.0] Having heard the learned advocate for the parties and perusing the investigation papers, it is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and

strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon'ble Apex 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 facie* 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; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided.

[6.0] Having considered the allegations made in the complaint, the appellant has not put up signature. It appears that as there was breach of Development Rules and since the land is in Simtal area, hence, it is not possible to issue Sanad for the land in question to the complainant. In view of the law laid down by the Hon'ble Apex Court in the case of **Prathvi Raj Chauhan vs. Union of India** reported in **(2020) 4 SCC 727**, the allegation is *prima facie* not made out. It appears that earlier similar type of complaint was filed by present complainant against various persons of the village and having regard to this, on 30th May

2023, villagers of Dhamadka Village have addressed a representation to DSP, Kuchchh West, Gandhidham. Considering aforesaid facts and considering the fact that nothing is required to be recovered or discovered from the appellant, I am inclined to allow present application.

[7.0] I have also considered 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 application

[8.0] Hence, the present appeal is allowed. The appellant is ordered to be released on anticipatory bail in the event of his arrest in connection with FIR being **C.R. No.11993014230060 of 2023 registered with Dudhai Police Station, Kachchh (East), Gandhidham**, on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that the appellant shall;

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) **shall remain present at the concerned Police Station on 05/10/2023 between 11.00 a.m. and 2.00**

p.m. and the IO shall ensure that no unnecessary harassment or inconvenience is caused to the applicant;

- (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 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
- (h) 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;

[9.0] Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicant. The applicant 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. It is clarified that the applicant, 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.

[10.0] At the trial, the Trial Court shall not be influenced by the *prima facie* observations made by this Court while enlarging the applicant on bail.

[11.0] Rule is made absolute to the aforesaid extent. Application is disposed of accordingly. Direct service is permitted.

R.S. MALEK

(HASMUKH D. SUTHAR,J)