

judgment and order dated 25.02.2005 in Criminal Appeal No.34 of 2001 are hereby quashed and set aside.

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(III) The applicant/accused i.e. Abdul Gafar s/o Mohammad Ibrahim, is hereby acquitted of the offence punishable under Section 16(1) (a) (ii) of the Prevention of Food Adulteration Act, 1954 vide Regular Criminal Case No.33 of 1992.

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(IV) The Criminal Revision Application is accordingly disposed of.

Result:- Criminal Revision Application allowed.

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ABC 2019 (III) 77 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(A. P. Thaker, J.)

R/Criminal Appeal No 334 of 2019

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Decided on 10 June 2019

RANGOONI ZAKIUDDIN AHMEDALI @ ZAKYBHAI- Appellant(s).

Versus

STATE OF GUJARAT

- Respondent(s).

e

Law Covered:- (A) Code of Criminal Procedure, 1973— Section 438— Indian Penal Code, 1860— Sections 114, 306, 506 & 506(2) — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015— Sections 3(2)(v), 3(2)(va), 14(a)(2), 18(a), 18(a) (2) — Civil dispute between the parties — Dispute settled— first offence — no criminal antecedents— doubt as to the ingredients of the offence under the Atrocity Act— no prima facie case under the Atrocity Act — power u/s 438 is available — appeal allowed— Bail granted. (Para 10)

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(B) Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015— Section 18-A — Amendment in Atrocity Act — Intention of Legislation — Statement of objects & reasons— Section 18(A) inserted only with a view counter to the directions issued by the Supreme Court in Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra — there is no object & reason given for nullifying those observations that — i) Proceedings in the present case are clear abuse of process of court & 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 complaint is found to be prima facie mala fide — no

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absolute bar against grant of anticipatory bail in cases under the Atrocity Act. (Para 9.2 & 9.4)

Facts:- It was contended in the FIR that the present appellant and original accused No.2 were indebted to the husband of the complainant and they had allotted one flat to the complainant and another flat to her husband towards the said amount but they were not getting the sale deed executed in their favour. It is further alleged that even accused No.3 had not made payment for the labour work to the tune of `18,00,000/-. A case u/ss 3(2)(v), 3(2)(va), 14(a)(2), 18(a), 18(a)(2), Atrocities Act and Sections 114, 306, 506 & Section 506(2), IPC was registered. In the present application for Anticipatory Bail it was observed that 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 complaint is found to be prima facie mala fide.

Law of relief:- Where proceedings are clear abuse of process of court or where no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide, there is no absolute bar against grant of anticipatory bail in cases under the Atrocity Act.

Held:- 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 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.

a 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.

b 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."(Para-9.2)

c 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 the conclusion at para 83(i) to (v).
d 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
e 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. (Para-9.4)

f On perusal of the FIR, it appears that there is civil dispute between the parties and as per the affidavit filed by the complainant, the same is settled. The appellant is a businessman and it appears that this is the first offence alleged against him, and he has no criminal antecedents. On perusal of the material placed coupled with the FIR, it appears that there is doubt as to the ingredients of the offence under the Atrocity Act, as such, without discussing the evidence in detail and when there is no *prima facie* case under
g the Atrocity Act then the power under Section 438 of the Criminal Procedure Code is available to this Court and considering the factual aspects of the present case, the appeal is required to be allowed. Of course, for interrogation of the appellant by the concerned police, necessary direction can be issued. So far as request for late surrender of passport is concerned, in
h view of the fact that co-accused of present appellant is also released today by this Court by a separate order passed in Criminal Appeal No.331 of 2019 and since appellant of that appeal is not granted any such favour, no differential treatment can be given to present appellant. Therefore, his request for late surrender of passport is refused. (Para-10)

Counsel:- For Appellant(s): Mr Pravin Gondaliya, Adv.

For Respondent(s): Mr Arpit P Patel, Ms Moxa Thakkar, Adv.

Cases Referred:-

1. *Ashabai Machindra Adhagale Vs. State of Maharashtra and others*, (2009) 3 SCC 789, (Para-8) a
2. *Dr.Subhash Kashinath Mahajan Vs. State of Maharashtra and another*, AIR 2018 SC 1498, (Para-8)
3. *Gorige Pentaiiah Vs. State of Andhra Pradesh and others*, (2008) 12 SCC 531, (Para-8).

JUDGMENT

A. P. THAKER,J.: - 1. This is an appeal under Section 14(A)(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (hereinafter referred to as "the Atrocity Act" for short) at the instance of the appellant - original accused No.1 for the anticipatory bail in connection with the FIR being *I-C.R.No.12/2019* registered with *Vadaj Police Station, District: Ahmedabad* for the offences punishable under Sections 306, 114 and 506(2) of the Indian Penal Code, and Section 3(2)(v), 3(2)(v-a) of the Atrocity Act. b

2. The short fact of the prosecution is that the FIR has been lodged by one Parulben Khodabhai Parmar inter alia contending that the builders of the Imam Tower, being the present appellant, and one Fazalabhai-original accused No.2 were indebted to the husband of the complainant namely Khodabhai Parmar, and they had allotted one flat to the complainant and another flat to her husband towards the said amount but they were not getting the sale deed executed in their favour. Time and again, the accused have insulted her husband, as he was a member of Scheduled Caste, before he committed suicide on 10.01.2019. It is further alleged that even one Shekharbhai - accused No.3 had not made payment for the labour work to the tune of Rs.18,00,000/- of one DPS School which the husband of the complainant had done, and even he had insulted him and threatened to kill him, as he kept on demanding the due amount, which has been alleged to be the additional factor for the husband of the complainant to commit suicide. With these allegations, the complaint came to be filed against the accused persons. c

2.1 It is also contended by the appellant that he has approached the Sessions Court by filing anticipatory bail application being Criminal Misc. Application No.377 of 2019, which has been rejected by the learned Special Judge (Atrocity), Court No.19, City Civil and Sessions Court, Ahmedabad City *vide* order dated 04.02.2019. d

2.2 The appellant has contended that there is no prima facie case against him for any of the alleged offence and he is innocent and falsely implicated in the alleged offence. It is also contended by the appellant that the entire case of prosecution as alleged in the complaint seems to be of not paying the amount for the labour work done by the husband of the complainant, and the dispute is of civil in nature. It is also contended that there is nothing on record to show that at any point of time, the deceased e

a was harassed by the accused and he was put in such a situation where he had no option but to commit suicide, therefore, the ingredients of the offence under Section 306 of the Indian Penal Code is not made out against present appellant. It is also contended that the complainant is a hearsay witness and she is not an eye witness to any of the incidents or facts narrated by her in the complaint. It is contended by the appellant that no prima facie offence is made out against him under Section 506 of the Indian Penal Code, which is mandatory for invoking Section 3(2)(va) of the Atrocity Act and no custodial interrogation of the appellant is required as there is nothing to be recovered or discovered at the instance of the appellant. He, therefore, prays to enlarge him on anticipatory bail.

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c 3. The respondent No.2 - original complainant has filed Affidavit wherein she has stated that on account of intervention of the respected members of the family, business community and society, an amicable settlement has been arrived at between her and the present appellant and she has no grievance with the appellant and she has received the cheques as mentioned in the compromise agreement dated 03.05.2019.

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e 4. Heard Mr.Y.S.Lakhani, learned Senior Advocate appearing with Mr.Pravin Gondaliya, learned advocate for the appellant, Ms.Moxa Thakkar, learned Additional Public Prosecutor for respondent No.1 and Mr.Arpit P. Patel, learned advocate for respondent No.2 - original complainant. Perused the papers made available by the prosecution as well as annexed with the memo of appeal.

f 5. Mr.Y.S.Lakhani, learned Senior Advocate for the appellant has submitted the same facts which are narrated in the memo of appeal and has prayed to release the appellant on bail. In view of the fact that the appellant is abroad at present, he also requested to grant one month's time to surrender his passport.

g 6. *Per contra*, Ms.Moxa Thakkar, learned Additional Public Prosecutor for respondent No.1 has vehemently opposed the grant of bail and submitted that the allegations made against the appellant are serious in nature and, therefore, the present appeal may be dismissed.

h 7. Since the dispute is settled between the parties and affidavit to that effect is already filed in this appeal, Mr.Arpit Patel, learned advocate for respondent No.2 - original complainant has not opposed the present appeal.

h 8. This Court has taken into consideration the law laid down by the Apex Court in the case of *Ashabai Machindra Adhagale Vs. State of Maharashtra and others* reported in (2009) 3 SCC 789, *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.

9. Learned advocate for the complainant 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. The said Section reads as under:- a

"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

(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. c

(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."

9.1 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:- d

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 with an objective to deliver greater justice to members of the Scheduled Castes and the Scheduled Tribes. e

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. f

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 g

a 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.

b 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.

c 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 authority, as the case may be.

6. The Bill seeks to achieve the above objects.

d 9.2 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
e 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
f 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:

g i) Proceedings in the present case are clear abuse of process of court and are quashed.

h 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 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. a

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. b

v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt. c

The above directions are prospective." c

9.3 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.

9.4 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 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. d
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10. On perusal of the FIR, it appears that there is civil dispute between the parties and as per the affidavit filed by the complainant, the same is settled. The appellant is a businessman and it appears that this is the first offence alleged against him, and he has no criminal antecedents. On perusal of the material placed coupled with the FIR, it appears that there is doubt as to the ingredients of the offence under the Atrocity Act, as such, without discussing the evidence in detail and when there is no *prima facie* case under the Atrocity Act then the power under Section 438 of the Criminal Procedure Code is available to this Court and considering the factual aspects of the present case, the appeal is required to be allowed. Of course, for interrogation of the appellant by the concerned police, necessary direction can be issued. So far as request for late surrender of passport is concerned, in view of the fact that co-accused of present appellant is also released today by this Court by a separate order passed in Criminal Appeal No.331 of 2019 and since appellant of that appeal is not granted any such favour, no differential g
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treatment can be given to present appellant. Therefore, his request for late surrender of passport is refused.

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11. In the result, the present appeal is allowed. The impugned order dated 04.02.2019 passed by the learned Special Judge (Atrocity), Court No.19, City Civil and Sessions Court, Ahmedabad City in Criminal Misc. Application No.377 of 2019 is hereby quashed and set aside. It is ordered that in the event of appellant herein being arrested pursuant to FIR registered as I -C.R.No.12/2019 registered with **Vadaj Police Station, District: Ahmedabad**, the appellant shall be released on bail on furnishing a personal bond of Rs. 15,000/- (Rupees Fifteen Thousand only) with one surety of like amount on the following conditions that the appellant shall :

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

(b) remain present at concerned Police Station on **17.06.2019** between 11.00 a.m. and 2.00 p.m.;

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(c) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade from disclosing such facts to the court or to any police officer;

(d) not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

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(e) at the time of execution of bond, furnish his address to the investigating officer and the court concerned and shall not change residence till the final disposal of the case till further orders;

(f) not leave India without the permission of the Court and if having passports shall deposit the same before the Trial Court within a week; and

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(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;

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12. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the appellant. The appellant 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 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.

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13. 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.

14. The appeal stands disposed of accordingly. Direct service is permitted.

Result:- Appeal Allowed.

**ABC 2019 (III) 86 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT**

(R.P. Dholaria, J.)
R/Criminal Appeal No 582 of 2019
Decided on 30 April 2019

YOGESH VANABHAI @ VINODBHAI SOLANKI - Appellant(s).

Versus

STATE OF GUJARAT - Respondent(s).

Law Covered:- (A) Protection of Children from Sexual Offences (POCSO) Act, 2012 – Sections 4 & 6 – Conviction under – Engagement of the prosecutrix with accused – ran away and got married – Statement of the prosecutrix – she was in love with the appellant accused & had already married to him and was carrying pregnancy due to physical relation with him – Held, trial court punished the accused for commission of marital rape which has already been saved in view of Section 375 exception-2, IPC – Conviction set aside – Acquittal. (Para 7 & 10)

(B) Protection of Children from Sexual Offences (POCSO) Act, 2012 – Sections 4 & 17 – Conviction under – Engagement ceremony of the prosecutrix with accused was already performed & thereafter, they ran away and got married – Held, in view of clear bar envisaged u/s 198(6) CrPC, taking a cognizance of the offence is barred – Acquittal. (Para 8 & 9)

Facts:- As per the case of the prosecution the prosecutrix and the accused (Appellant No.1) both were working in a Mill and had long standing acquaintance which culminated into love and in consequence thereof, father of the prosecutrix carried out engagement ceremony of the prosecutrix with the appellant accused for about two years prior to the date of incident. Thereafter, they both ran away and the father of the prosecutrix lodged the complaint inter alia alleging that the appellant accused abducted his daughter from his guardianship and also established physical relation with her, due to which, she had become pregnant and delivered a baby girl. A case was registered and the appellant no.1 accused was convicted u/ss 4 & 6 of POCSO Act and appellants Nos. 2 and 3 were convicted u/ss 6 & 17. The honourable Gujarat High Court set aside the conviction in the present appeal.

Law of relief:- In view of Section 375 exception-2, IPC, conviction under the POCSO Act is also not sustainable.

September 2019