IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 830 of 2020

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VISHNUKUMAR NATHABHAI PRAJAPATI

Versus

STATE OF GUJARAT

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Appearance:
MR NV GANDHI(1693) for the Appellant(s) No. 1
MR PRANAV TRIVEDI, ADDL. PUBLIC PROSECUTOR(2) for the Opponent(s)/Respondent(s) No. 1
RULE SERVED BY DS(65) for the Opponent(s)/Respondent(s) No. 2

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CORAM: **HONOURABLE MS. JUSTICE GITA GOPI**

Date : 22/12/2020

ORAL ORDER

1. Though served, none appears on behalf of the respondent No.2.

2. This appeal has been preferred under section 14(A) of the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989* (for short, "the Atrocities Act") seeking quashment of the order dated 19.08.2020 passed by the Court of learned 2nd Additional Sessions Judge, Chhota Udepur in Criminal Misc. Application No.485 of 2020 and to enlarge the appellant on anticipatory bail in connection with the complaint being FIR No.11184002200851 of 2020 registered with Chhota Udepur Police Station for the offences punishable under sections 323, 330, 504, 337, 506(2), 166 and 114 of IPC and sections 3(2)(v), 3(1)(c) and 3(1)(e) of the Atrocities Act.

3. Mr. N.V. Gandhi, learned advocate for the appellant, submitted that on 16.07.2020 the original accused No.1 had filed a complaint being FIR No.11184002200837 of 2020 with Chhota Udepur Police Station against the complainant herein and one Chhaganbhai Vishyabhai Rathva for allegedly violating the lockdown norms and for obstructing a public servant from doing their duty. The appellant herein was the Investigating Officer of the said complaint. It is further submitted that as such the appellant has not made any casteist remarks against the complainant herein. The main allegation against the appellant is of using inappropriate language against the complainant, which would not fall under the criteria of making "casteist remarks" at the complainant. Further, no third party was present when the appellant had allegedly made such remarks against the complainant and therefore, the alleged remarks could not be said to have been made in "public view". It is further submitted that the co-accused has been released on anticipatory bail. It was, therefore, prayed that discretion may be granted in favour of the appellant.

4. Mr. Pranav Trivedi, learned Additional Public Prosecutor appearing on behalf of the respondent – State, opposed the grant of anticipatory bail to the appellant. It is submitted that the allegations made in the impugned complaint, prima facie, reveals the commission of the alleged offence by the appellant. It was, therefore, prayed that no discretion may be exercised in favour of the appellant.

5. Heard learned advocates for the parties and perused the material on record. The incident in question appears to have

taken place on account of the alleged breach of the Government Notification by the complainant by not wearing a mask during the prevailing pandemic. The alleged incident does not appear to have taken place in public view.

6. Considering the facts of the case, it would be relevant to refer to a recent decision of the Apex Court in the case of **Prathvi Raj Chauhan v. Union of India & others rendered in Writ Petition (C) No.1015 of 2018 decided on 10.02.2020** wherein, the provisions of section 18 and 18(A) of the Atrocities Act have been considered and it has been held that the bar under section 18 of the Atrocities Act shall not apply if the complaint does not disclose a prima facie case. Taking into consideration the facts of the case, nature of allegations and the gravity of offence, this Court is inclined to grant anticipatory bail to the appellant.

7. In the result, the present appeal is allowed. The impugned order passed by the Court below is quashed and set aside and the appellant is ordered to be released on bail in the event of his arrest in connection with the complaint being FIR No.11184002200851 of 2020 registered with Chhota Udepur Police Station on executing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of like amount on the following conditions:

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

(b) shall remain present at concerned Police Station on 29.12.2020 between 11.00 a.m. and 2.00 p.m.;

(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 concerned trial court and if having passport shall deposit the same before the concerned 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;

8. 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 appellant, 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.

9. At the trial, the concerned trial Court shall not be influenced by the prima facie observations made by this Court in the present order. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.

(GITA GOPI,J)

DIPTI PATEL