

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 1012 of 2024
With
CRIMINAL MISC.APPLICATION (FOR VACATING INTERIM RELIEF)
NO. 1 of 2024
In R/SPECIAL CRIMINAL APPLICATION NO. 1012 of 2024

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DIPAKBHAI JIVANBHAI SOLANKI & ANR.

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR AJ YAGNIK(1372) for the Applicant(s) No. 1,2

MR TUSHAR L CHAUHAN(12449) for the Applicant(s) No. 1,2

JAIVIK UDAY BHATT(7319) for the Respondent(s) No. 2

MR UDAY H BHATT(6457) for the Respondent(s) No. 2

RULE SERVED BY DS for the Respondent(s) No. 1,3

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 09/06/2025

ORAL ORDER

ORDER IN CRIMINAL MISC.APPLICATION (FOR VACATING INTERIM RELIEF) NO. 1 of 2024

1. Affidavit along with Annexures filed by petitioner Nos.1 and 2 are ordered to be taken on record.

2. Pursuant to the order passed by the Hon'ble Supreme Court in Special Leave Petition (Criminal) No. 50583/2024, the matter is taken up for hearing and considered the regards of continuation or non-continuation of interim order passed by this Court on 24.01.2024.

3. Heard Mr.Anshin Desai, learned Senior Counsel assisted by Mr.Jaivik Uday Bhatt, learned counsel for the applicant-complainant, Mr.Manan Mehta, learned APP for the respondent State and Mr. Jal Soli Unwala, learned Senior Counsel assisted by Mr. T.L.Chauhan, learned

counsel for original petitioners.

4. Mr. Anshin Desai, learned Senior Counsel has submitted that because of interim relief granted by this Court, investigation is yet not commenced. Dying Declaration of the complainant is recorded, wherein it clearly reveals that the offence under Section 307 of Indian Penal Code, 1860 is made out. Even, while refusing anticipatory bail to the co-accused Smitaben, coordinate Bench of this Court has assigned the reasons. Considering the same, Mr. Desai has requested to vacate the interim relief. Opposing the same, learned Senior Counsel Mr. Unwala has submitted that chargesheet is filed in the cross complaint, wherein, specific case of the applicant, the impugned complaint is filed belatedly and applicant herein fell down herself from the terrace and sustained injuries. No offence under Atrocities Act is made out.

5 Considering the facts and material on record, it prima facie appears that the petitioners belong to Scheduled Caste and as this Court has prima facie observed that the provisions of Atrocities Act is not applicable to the petitioners. Caste certificate produced at Annexure-I shows the status of the petitioners i.e. scheduled castes. Even looking to the allegations made in the complaint, prima facie it appears that respondent No.2 and petitioners having some dispute with regard to extra marital affairs of respondent No.2 with one Paresh Prajapati, who happens to be the husband of accused No.1 Smitben. The petitioners are accused Nos.2 and 3. Petitioner No.1 having knowledge that respondent No.2 and husband of the complainant Dr. Paresh Prajapati stayed in Room No.201 at RedBlue Hotel and someone informed them about the presence of petitioners and accused No.1 and due to this, respondent No.2 and Paresh Prajapati went to the terrace of the hotel on third floor and hide themselves and thereafter, accused persons including the

petitioners went to the terrace and while accused No.1 asked questions to her husband Paresh Prajapati and the complainant, at that time, respondent No.2 got provoked and made an assault.

5.1 In this regard, accused No.1 has lodged the complaint on 10.01.2024 under Sections 323, 294(b) read with Section 114 of the Indian Penal Code, 1860 against her husband and the present complainant (respondent No.2). There is specific averment made in the complaint that, at that time, respondent No.2 jumped from the terrace and received injuries. Said complaint was investigated and chargesheet is filed against one Paresh Prajapati and respondent No.2, which is culminated into Criminal Case No.9774/2024.

5.2 While impugned complaint under challenge is filed under Sections 307, 323 and 114 of Indian Penal Code, 1860 and Section 3(2)(v-a) of the Atrocities Act on 12.01.2024 i.e. after 2 days to the alleged incident took place on 10.01.2024. As the petitioners belong to scheduled caste, prima facie no offence under the provisions of SC/ST Act are attracted. So far Section 307 of Indian Penal Code, 1860 is concerned, injury is irrelevant but mens rea and intention is relevant. While specific averment made in the complaint filed against the respondent No.2 dated 10.01.2024 by accused No.1, wherein chargesheet has been filed and specific averment made in the complaint that respondent No.2 jumped from terrace of the hotel and sustained serious injuries. Hence, in this regard, the investigation is required which reveals the clear picture.

6. Considering the aforesaid facts, since interim relief in terms of para 19(b) is granted, it is expedient to modify the interim relief granted by this Court vide order dated 24.01.2024 to the effect that the investigating Agency is permitted to investigate the offence and submit a report within a period of **three weeks** before this Court. Meanwhile, no

coercive steps be taken against the accused Nos. 2 and 3 and petitioners – accused Nos.2 and 3 are directed to join the investigation.

7. At this stage, learned Senior Counsel Mr. Desai has opposed the prayer to grant relief of no coercive steps against the petitioners – accused Nos.2 and 3 contending that if the petitioners are not arrested, investigation could not be completed and adversely affect the filing of chargesheet. But in light of Section 190 of BNSS / Section 170 of Cr.P.C as well as the law laid down in the case of **Siddharth Vs. State of U.P, reported in 2022 (1) SCC 676**, even for filing of the chargesheet, it is not mandatory every time to arrest the accuse. Hence, said argument is not acceded to at this stage.

CRMA No.1 of 2024 stands disposed of.

Let the main matter be listed for further consideration on **25.06.2025.**

(HASMUKH D. SUTHAR,J)

SUCHIT