

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 11437 of 2017

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SAMJUBEN KISHORBHAI MORI....Applicant(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

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Appearance:

MR HARDIK A DAVE, ADVOCATE for the Applicant(s) No. 1

MR AD SHAH, ADVOCATE for the Respondent(s) No. 2

MS MONALI H BHATT, ADDL. PUBLIC PROSECUTOR for the
Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE B.N. KARIA**

Date : 22/05/2017

ORAL ORDER

Rule returnable on **15.06.2017**.

Learned advocate Mr. A.D.Shah appears and waives service of notice of rule for and on behalf of respondent no.2. Learned Additional Public Prosecutor Ms. Monali H. Bhatt waives service of notice of rule for and on behalf of respondent no.1-State.

Heard learned advocates appearing on behalf of respective parties.

Learned advocate Mr. Hardik A Dave appearing on behalf of the applicant, at the outset does not press this application so far as Sections 465, 467, 468, 471, 20(b) and 114 of the Indian Penal Code. Learned advocate Mr. Hardik A Dave urged

that there is a huge delay in registration of the FIR, which is for an alleged offence of the year 2002. He contended that there are no anticipatory bail provisions for an offence punishable under Sections 3(1)(i), 3(2) and (5A) of the Provisions Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, and therefore, he insisted to quash and set aside the impugned FIR. He further urged that the petitioner has been falsely implicated into the alleged offence by the respondent no.2-complainant. He pointed out that though the respondent no.2-complainant was aware about the fact that revenue proceedings were initiated by the original accused no.2 and opposed by respondent no.2 by way of filing objections however, the respondent no.2 had not filed any criminal proceedings, which itself is suggestive of the fact that the impugned FIR is nothing, but an abuse of process of law. Learned advocate for the applicant pointed out that the applicant has filed a Civil Suit, being Regular Civil Suit No.414 of 2012, wherein, *status quo* order has been passed by the Court concerned. In light of this facts, learned advocate for the applicant sought interim protection so that the applicant be prevented from the persistent harassment from the authority concerned.

Learned advocate, Mr. A.D.Shah for the respondent no.2

has filed affidavit and argued that from the documents produced on the record, a Civil suit is pending before the Civil Court and as per the averments made in the complaint, the petitioner is prima facie involved in the offence. Considering the seriousness of the offence and involvement of the petitioner, no interim relief as prayed for be granted.

Learned Additional Public Prosecutor supported the arguments that, at this juncture, no interim relief be granted to the applicant so far as provisions of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act is concerned, as prima facie, the petitioner is involved in the offence alleged.

Considering the facts of the case and submissions made by the learned Additional Public Prosecutor from the complaint it transpires that the alleged offence was committed in the year 2001-2010 and the complaint has been lodged by the respondent no.2 in the year 2017. This petition is not pressed by the learned advocate for the petitioner so far as Sections 465, 467, 468, 471, 120(b) and 114 of Indian Penal Code are concerned. So far as provisions of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act is concerned, this Court is prima facie of the view that interest of the petitioner would subserved at this stage, if certain directions are issued to the police authority so far as Section 3(1)(i), 3(2)

and (5-A) of Atrocity Act are concerned. So far as other provisions of Indian Penal Code are concerned, the Investigating Officer shall proceed with further investigation without initiating any coercive steps against the petitioner herein.

Therefore, it is directed that the concerned police authority may proceed to investigate into the offence without resorting to any coercive steps against the applicant herein.

Petitioner may approach the concerned Court by filing appropriate application for Anticipatory bail or Regular bail which will be decided by the concerned Court on its own merits in accordance with law.

Direct service is permitted.

(B.N. KARIA, J.)

NEHA