

2025 LiveLaw (SC) 869

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

B.R. GAVAI; CJI., K. VINOD CHANDRAN; J., N.V. ANJARIA; J.
SPECIAL LEAVE PETITION (CRL.) NO. 8169 OF 2025; SEPTEMBER 1, 2025
KIRAN *versus* RAJKUMAR JIVRAJ JAIN & ANR.

Code of Criminal Procedure, 1973 (CrPC) - Anticipatory Bail - Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act) - Section 18 - Applicability of Section 438 of CrPC – Held, anticipatory bail is permissible under SC/ST Act only if *prima facie* offence isn't made out - The bar under Section 18 of the SC/ST Act, which excludes the application of Section 438 CrPC, is not absolute - This requires a court to verify the complaint's averments and determine if a *prima facie* is established - The Court is not permitted to conduct a 'mini-trial' by evaluating evidence or other materials - The bar on anticipatory bail under Section 18 is intended to uphold the Act's objective of protecting vulnerable SC/ST communities and ensuring social justice - The denial of anticipatory bail for these offences is not considered unreasonable or a violation of Article 14 of Constitution, as these offences are a distinct class - The bar is not held to be violative of Article 21 - High Court committed a 'manifest error' and a 'jurisdictional error' by evaluating witness testimonies and concluding that no offence was made out - The incident occurred outside the complainant's house, which was a place 'within public view' - The caste nexus was established and the humiliation was clearly intentional - Anticipatory bail was granted by overlooking and disregarding the bar of Section 18 of the SC/ST Act, was a clear illegality - Appeal is allowed. [*Relied on: Kartar Singh v. State of Punjab 1994 3 SCC 569; Paras 5-8*]

Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act) - Section 3(1)(s) & (r) - 'Public View' - the term 'any place within public law' is distinct from a 'public place' - An incident occurring in location like a lawn outside a house, which can be seen by someone from the road, would be considered a place within 'public view'. [*Para 5*]

For Petitioner(s): Mr. Amol Nirmalkumar Suryawanshi, Adv. Ms. Srishty Pandey, Adv. Mr. B Dhananjay, Adv. M/S. Juritrust Law Offices, AOR

For Respondent(s): R-1 Mr. Dilip Annasaheb Taur, AOR Mr. Amol V Deshmukh, Adv. R-2 Ms. Ira Mahajan, Adv. Mr. Siddharth Dharmadhikari, Adv. Mr. Aaditya Aniruddha Pande, AOR Mr. Shrirang B. Varma, Adv.

J U D G M E N T

N.V. ANJARIA, J.

Leave granted.

1.1 With the consent of learned counsels for the parties and upon their joint request, the appeal was taken up for final hearing today.

2. By way of present appeal, what is called in question is judgment and order dated 29.04.2025 of the High Court of Judicature at Bombay, Bench at Aurangabad, in Criminal Appeal No.201 of 2025, whereby the High Court allowed the pre-arrest bail to respondent No.1 under Section 438 of the Code of Criminal Procedure, 1973, which was refused by the Additional Sessions Judge, Paranda.

3. FIR No.255/2024 came to be registered by the appellant-complainant with the Paranda Police Station, District Dharashiv on 26.11.2024 against accused-respondent

No.1 herein and others in respect of alleged commission of offenses punishable under Sections 118 (1), 115(1), 189(2), 189(4), 190, 191(2), 191(3), 333, 324(4), 76, 351(3) and 352 of the Bharatiya Nyaya Sanhita, 2023 and under Sections 3(1)(o), 3(1)(r), 3(1)(s), 3(1)(w)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3.1 The relevant and material part of the contents of the said FIR is extracted below.

"Today on 25.11.2024 at around 11:00 AM, while I and my mother Mohini were at home, Bahubali Masalkar, a peon from the Gram Panchayat Office, Kapilapuri, came in front of my house and started abusing us, asking why we did not vote in yesterday's assembly elections as we had asked. At that time, I tried to tell him that voting was my only concern, but he abused me and then rushed at me. At that time, we got into a fight. After that we got into a fight. After that he left from there.

Then at 11:20 in the morning, my village's known, namely Rajkumar Jain, Jaykumar Jain, Bharatesh Awani, Jayghosh Jain, Kishore Awani, Vaibhav Awani, Nabiraj Awani, Bahubali Masalkar, Jitendra Wasgadekar, Anil Wasgadekar, Ranjit Rajkumar Jain, Jagdish Jain, all residents of Kapilapuri (all Jains), came in front of our house. At that time, Rajkumar Jain said to me, "Mangtyano, you have become much arrogant", you are staying in the village and voting against me, so he hit me on the head and back with an iron rod." At that time, I fell down. After that, Kishore Jain and Vaibhav Awani entered my house, pushed my mother Mohini and aunt Rekha, grabbed the saree of mother Mohini and pulled it, threatened that "Mangtyano, you have become arrogant, we will not let you stay in the village, we will burn your houses," beat them with an iron rod and even punched them giving internal injuries. In it, a one-tola gold mangalsutra from mother Mohini's fortune necklace fell somewhere in the scuffle. The household utensils were damaged by the rioters, causing total damage to our household items.

Seeing us being beaten up, my friend Yashwant Bodre from the village came to the house to resolve the dispute. Rajkurhar Jain also said to him that you Ramoshi have also become arrogant, that you voted for someone else in yesterday's assembly elections without listening to us; so he beat Yashwant on the left hand and back with an iron rod in his hand. At that time, some of them had petrol bottle in their hands and were shouting and threatening repeatedly that they would burn our houses and not let us stay in the village. Due to the noise of this commotion, three of our villagers, Avinash Masgude, Appa Masgude, Omkar Mane, came to the house and rescued us from the clutches of these men. After that, when approached to the Paranda police station to file a complaint, the police immediately gave us a letter for medical treatment and sent us to the Paranda Sub-District Hospital for medical treatment.

On 25.11.2024 between 11:00 AM to 11.20 AM, the names of Rajkumar Jain, Jaykumar Jain, Bharatesh Awani, Jayghosh Jain, Kishore Awani, Vaibhav Awani, Nabiraj Awani, Bahubali Masalkar, Jitendra Wasgadekar, Anil Wasgadekar, Ranjeet Rajkumar Jain, Jagdish Jain, all residents of Kapilapuri, angry that I voted against them in yesterday's assembly elections, even though they knew that I and my family belongs to the Matang community, they abused us in caste terms, beat us with an iron rod and injured us, and they also entered my house and beat my mother and aunt abusing in filthy language, and they pulled my mother's saree and molested her, so I have a complaint against them.

I am giving my above statement with full of my consciousness and after reading it, I found it completely correct as per my narration."

3.2 What is narrated in the FIR disclosed certain manifest aspects. On 25.11.2024 in the morning, the respondent-accused along with others went to the house of the appellant and standing outside and in front of appellant's house stated to the appellant "Mangtyano, you have become much arrogant, you are staying in the village and voting against me". The appellant was attacked with an iron rod. The mother and aunt of the appellant were addressed with the same set of words as above and that they all were beaten with the iron

rod and were punched inflicting internal injuries, the Mangalsutra of the mother fell somewhere in the scuffle. The accused had in their hands petrol bottles and were repeatedly shouting and threatening that they would burn the house of the appellant. The injured appellant lodged the FIR from the hospital.

3.3 The evident reason for this incident was animosity generated in the mind of the accused in respect of appellant's act of not voting in favour of particular candidate in the assembly elections which had concluded on the previous day. The exhibition of enmity by the accused, their utterances as above and the conduct of beating the appellant and hurling castiest abuses and threats were in public view, outside the house of the appellant. The appellant belonged to the Scheduled Caste community whose caste was "Mang" or "Matang"; whereas the respondent accused was not the member of the Scheduled Caste or Scheduled Tribe community. He hailed from 'Jain' community.

3.4 While rejecting the prayer of respondent-accused for anticipatory bail, the Additional Sessions Judge, Paranda recorded findings in paragraph 8 of his order inter alia that there was a specific allegation against the accused and that the accused had abused the complainant by referring to his caste, that the caste certificate confirmed that the complainant-informant belonged to the Scheduled Caste community and further that the incident was witnessed by independent witnesses. On the basis of statements in the FIR and the material available, the court concluded that the ingredients of the offences punishable under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the SC/ST Act") as alleged were made out.

3.5 When the order rejecting the anticipatory bail was challenged before the High Court by the accused, the High Court took the view to record that there were inconsistencies in the prosecution story as could be gathered from the account of eye-witnesses. According to the High Court, the entire prosecution case appeared to be exaggerated and false. What weighed with the High Court was also the aspect that the incident took place immediately after the declaration of results of the assembly elections, therefore, it had political overtones. Resting on such considerations, the High Court concluded that the appellant was falsely implicated. Further referring to the nature of the injuries and allegations, the High Court granted anticipatory bail.

4. Mr. Amol Nirmalkumar Suryawanshi, learned counsel appearing for the appellant-herein assailed the judgment and order of the High Court to submit that the High Court not only misdirected itself in exercise of the discretion to grant bail to respondent No.1, but it plainly overlooked the provisions of Section 18 of the SC/ST Act. Highlighting the contents of and the allegations in the FIR, it was submitted that the accused used abusive language referring to caste and the appellant who was the member of the Scheduled Caste community was thereby subjected to derogation and insult. The appellant was intimidated and his mother and aunt were also abused with castiest slur and were threatened. Learned counsel for the appellant further submitted that the castiest slur and the castiest abuse employed against the appellant clearly made out the offence under Section 3 of the SC/ST Act as alleged and since the offence was prima facie committed, the pre-arrest bail could not have been granted by the High Court in view of the provision of Section 18 of the Act.

4.1 Learned counsel for the appellant relied on the decision of Vilas Pandurang Pawar vs. State of Maharashtra¹ to submit that at the stage of the consideration of grant of bail

¹ (2012) 8 SCC 795

or otherwise, the High Court was not expected to conduct a mini trial. It was submitted that the reasoning of the High Court was not acceptable. Regarding bar created by virtue of Section 18 of the SC/ST Act, learned counsel pressed into service the decision of this Court in *Prathvi Raj Chauhan vs. Union of India*².

4.2 On the other hand, learned counsel for respondent No.1 seeking to defend the order of the High Court, submitted that Section 18 of the SC/ST Act did not create an absolute bar to grant anticipatory bail. He proceeded to submit that in subsequent decision of this Court in *Shajan Skaria vs. The State of Kerala & Anr.*³, it was observed that the court needed to undertake an exercise to find out whether there was a prima facie substance in the allegations. According to learned counsel for respondent No.1, the allegations in the FIR were made for the sake of making and were out of anger regarding casting of vote in the assembly elections. He tried to submit that it was wrong to give a castiest colour to the allegations to conclude that any offence under the SC/ST Act was committed by the accused.

4.3 The respondent-State of Maharashtra filed the counter affidavit and opposed the grant of pre-arrest bail to respondent No.1 accused by emphasising the operational ambit of Section 18 of the SC/ST Act. It was highlighted that when prima facie material existed in the form of allegations in the FIR and other attendant factual aspects, the respondent No.1 could not have been granted the anticipatory bail by the High Court.

5. Amongst the offences alleged in the FIR, included those under Sections 3(1)(o), 3(1)(r), 3(1)(s) and 3(1)(w)(i) of the SC/ST Act. The relevant extract of Section 3 of the SC/ST Act is as under.

“3. Punishments for offences atrocities.— (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,

(b) to (n)

(o) commits any offence under this Act against a member of a Scheduled Caste or a Scheduled Tribe for having voted or not having voted for a particular candidate or for having voted in a manner provided by law; (p) (q)

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

(t)

(u)

(v)

(w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient’s consent;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

5.1. Section 18 of the SC/ST Act is reproduced:

² (2020) 4 SCC 727

³ 2024 SCC OnLine SC 2249

“18. Section 438 of the Code not to apply to persons committing an offence under the Act.— Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

5.1.1 Section 18A in its sub section (1) of the Act provides that for the registration of an FIR against any person, preliminary enquiry shall not be required. It is further stated that the investigating officer shall not be required to take approval for the arrest, if necessary, of any person against whom an accusation about the commission of an offence under this SC/ST Act has been made. Sub section (2) of Section 18A of the SC/ST Act mentions that the provisions of Section 438 of the Cr.PC shall not apply to a case under this Act notwithstanding any judgment or order or direction of any Court.

5.2 It is evident from the above provision of Section 18 that it expressly excludes the applicability of Section 438 of the Code of Criminal Procedure, 1973 (“hereinafter referred to as “the Cr.PC”). In another words, in relation to any case involving arrest of a person who is facing the accusation about committing offence under this Act, protection of Section 438, Cr.P.C. would not be available. The Legislature has taken away the benefit of anticipatory bail in respect of the arrest for the offences alleged under the SC/ST Act. The bar in Section 18 of the SC/ST Act would operate.

5.3. While upholding the Constitutional validity of Section 18 of the Act, this Court in State of M.P. & Anr. vs. Ram Krishna Balothia & Anr.⁴ observed as under,

“... The offences enumerated under the said Act fall into a separate and special class. Article 17 of the Constitution expressly deals with abolition of ‘untouchability’ and forbids its practice in any form. It also provides that enforcement of any disability arising out of ‘untouchability’ shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1) arise out of the practice of ‘untouchability’.” (Para 6)

5.3.1 The court proceeded to observe,

“The exclusion of Section 438 CrPC in connection with offences under the Act has to be viewed in the contest of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail as pointed out in the Statement of Objects and Reasons of the Act. In these circumstances, if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences”

(para 6)

5.4 The aforesaid bar is held to be not violative of Article 21 of the Constitution. In Kartar Singh vs. State of Punjab⁵ it was stated that taking away the right of prearrest bail under Section 438 of the Cr.PC, under Section 18 of the SC/ST Act would not infringe the right to personal liberty.

5.5 In Vilas Pandurang Pawar vs. State of Maharashtra⁶, this Court explained the bar under Section 18 of the SC/ST Act against grant of anticipatory bail in the following words,

“Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a

⁴ (1995) 3 SCC 221

⁵ (1994) 3 SCC 569

⁶ (2012) 8 SCC 795

specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.” (Para 9)

5.5.1 It was further stated in Vilas Pandurang Pawar (supra),

“Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.” Para 10)

5.6 A three judge bench of this Court in Prathvi Raj Chauhan (supra) expressed itself thus,

“... exclusion of Section 438 CrPC in connection with offences under the Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail as pointed out in the Statement of Objects and Reasons of the Act.” (Para 6)

5.6.1 This Court emphasised in Prithvi Raj Chauhan (supra) that anticipatory bail cannot be granted as a matter of right. It was stated that bail is essentially a statutory right and cannot be said to be an essential ingredient of Article 21 of the Constitution. It was further observed that if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences.

5.7 The aforesaid provision of Section 18 and the bar created thereunder has to be seen in the context of the object and purpose with which the Parliament enacted the SC/SC Act, 1989. This legislation was brought into force with an avowed object of implementing the measures to improve the socio-economic conditions of the Scheduled Castes and Scheduled Tribes, who have remained a vulnerable class in the society. The underlying idea is to ensure that the persons belonging to these classes are not denied their civil rights, are not subjected to indignities and are insulated from humiliation and harassment.

5.7.1 The provisions of Section 18 in its ultimate analysis, furthers the very object of the enactment. Seemingly a stricter provision, it underscores the Constitutional idea of availing social justice and to ensure the same pedestal for the Scheduled Caste and Scheduled Tribe community people with other classes in the society.

5.8 The decision of this Court in Shajan Skaria (supra) sought to be pressed into service on behalf of respondent No.1 take no different view. In that case, the Bench of two Judges of this Court elaborated the law in respect of grant of anticipatory bail, then highlighted and recognised the bar created under Section 18 of the SC/ST Act to observe that only in the cases where the offence could not be said to have been made out on a very prima facie consideration, the court may exercise the discretion to grant pre-arrest bail to the accused.

5.8.1 In Shajan Skaria (supra) case the appellant-accused who was an Editor of an Online news channel who had published a video on YouTube levelling certain allegations against the complainant who belonged to “Pulaya” community and who was a Member of Kerala State Legislative Assembly representing the constituency which seat was reserved for the member of Scheduled Caste and Scheduled Tribe community. An attentive reading of the broadcast made on YouTube which was a subject matter in that case, would go to indicate

that there was no reference therein to the caste name, which aspect becomes clear from the very translation itself, narrated in the judgment by the Court. The caste word “Pulaya” was not even referred to in the complaint also, what was only stated by complainant the subject matter was on Scheduled Caste community. In the totality of the circumstances thereby this Court in Shajan Skaria (supra) took the view that the contents of the YouTube video displayed by the accused were not intended to denigrate the complainant as a member of the Scheduled Caste and that it could not be said to be with castiest slur.

5.9 In Hitesh Verma vs. State of Uttarakhand & Anr.⁷ as well as in Ramesh Chandra Vaish vs. State of U.P.⁸ this Court stated that intimidation or insult amounts to an offence under Section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 should have been targeted intentionally to the member of the Scheduled Caste or Scheduled Tribe community and also because he is member of the Scheduled Caste or Scheduled Tribe community. In Swarn Singh (supra), it was stated that for making out the offence under Section 3(1)(r) of the SC/ST Act, 1989, it requires that the insult or intimidation should be at a place within public view.

6. In light of the parameters in relation to the applicability of Section 18 of the Act emanating from afore-discussed various decisions of this Court, the proposition could be summarised that as the provision of Section 18 of the Scheduled Caste and Scheduled Tribes, Act, 1989 with express language excludes the applicability of Section 438, Cr.PC, it creates a bar against grant of anticipatory bail in absolute terms in relations to the arrest of a person who faces specific accusations of having committed the offence under the Scheduled Caste and Scheduled Tribe Act. The benefit of anticipatory bail for such an accused is taken off.

6.1 The absolute nature of bar, however, could be read and has to be applied with a rider. In a given case where on the face of it the offence under Section 3 of the Act is found to have not been made out and that the accusations relating to the commission of such offence are devoid of prima facie merits, the Court has a room to exercise the discretion to grant anticipatory bail to the accused under Section 438 of the Code.

6.2 Non-making of prima facie case about the commission of offence is perceived to be such a situation where the Court can arrive at such a conclusion in the first blush itself or by way of the first impression upon very reading of the averments in the FIR. The contents and the allegations in the FIR would be decisive in this regard. Furthermore, in reaching a conclusion as to whether a prima facie offence is made out or not, it would not be permissible for the Court to travel into the evidentiary realm or to consider other materials, nor the Court could advert to conduct a mini trial.

7. Reverting to the facts of the present case, the respondent-accused was not a member of Scheduled Caste or Scheduled Tribe community. The appellant belonged to scheduled caste community known as “Mang” or “Matang”. The allegations made in the FIR lodged by the complainant was that he was addressed by the accused with abusive casteist utterance “Mangatyano, you are became very arrogant, you are staying in the village and voting against”. The appellant was addressed as above by the accused outside the house of the appellant where others were present

7.1 The accused persons beat the complainant with iron rod and threatened to burn the house. The mother and aunt of the appellant-complainant were also meted out similar

⁷ (2020) 10 SCC 710

⁸ 2023 SCC OnLine SC 668

treatment with intimidation and were addressed with same casteist slur. The use of the word “Mangatyano” was with a clear intention to humiliate the complainant because he belonged to the said Scheduled Caste community. In the said abusive utterances and conduct by the accused, the caste nexus was established. The complainant was humiliated with casteist and abusive approach for the reason that he did not vote in favour of particular candidate one Bahubali-accused No.8 in the Assembly Election as desired by the respondent-accused.

7.2 The incident as above took place outside the house of the complainant, it was a place within public view. The term “any place within public view” was considered by this Court in Swarn Singh (supra) and Hitesh Verma (supra) was also subsequently referred to in the decision of this Court in Karuppudayar vs. State Rep. by the Deputy Superintendent of Police, Lalguid Trichy & Ors.⁹ wherein the Court drew distinction between “public place” and “any place within public view”. It was held that if the offence is committed outside the building, for example in the lawn outside the house, and the lawn can be seen by someone from the road or lawn outside the boundary wall, then the lawn would certainly be a place within the public view.

8. In the present case, as noted above, the incident took place outside the house of the appellant which could be viewed by anybody. It was indeed a place within public view. There is no gainsaying that in the facts of the case all ingredients necessary to prima facie constitute offences under Section 3 of the Scheduled Caste and Scheduled Tribe Act, 1989 as alleged in the FIR stood satisfied. Furthermore, the occurrence of incident was fortified by recovery of clothes and weapons.

9. In the above view, there is no escape from the conclusion that offence under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is made out from the bare reading of the FIR. The High Court in proceeding to evaluate the testimony of witnesses and to opine on that basis that there were certain discrepancies, no offence was made out, committed a manifest error. The anticipatory bail granted by overlooking of and disregarding the bar of Section 18 of the Act was a clear illegality and jurisdictional error committed by the High Court. The order of the High Court could not be sustained in the eye of law.

10. In the result, the judgement and order dated 29.04.2025 in Criminal Appeal No.201 of 2025 passed by the High Court of Judicature at Bombay, Bench at Aurangabad is hereby set aside. The Appeal is allowed. The anticipatory bail granted to respondent No. 1 stands cancelled.

10.1 It is clarified at this stage that the observations and findings recorded in this judgment are of prima facie nature, limited for the purpose of deciding the question of grant of anticipatory bail. The trial shall proceed independently on its own merits, uninfluenced by any observations herein.

In view of the disposal of the main appeal, all the interlocutory applications as may be pending stands disposed of.