

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Bail App No.371/2025

Mussarat Naz

.....Petitioner(s)

Through: Mr. Sunil Sethi, Sr. Advocate with
Mr. Paras Gupta, Advocate

Vs

Union Territory of J&K and others

..... Respondent(s)

Through: Mr. Pawan Dev Singh, Dy. AG for R-1.
Mr. Irfan Khan, Advocate with
Mr. Mohd. Azam, Advocate for R-2 & 3.

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

ORDER
27.12.2025

1. Heard further arguments on both the sides.
2. Through the medium of the instant bail application having been filed in terms of the provisions of Section 482 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS' for short), pre-arrest bail on behalf of the petitioner in case FIR bearing No.329/2025 dated 22.11.2025 registered with the Police Station, Bahu Fort, Jammu under Sections 143(5)(7), 304, 127(2), 115(2), 352, 3(5) BNS 3(r)(s)(u) of the **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989** (hereinafter referred to as the '**Act**' for short) has been sought on the grounds *inter alia* that she is a law abiding and peace loving citizen of the country presently residing at Sunjawan Bathindi Jammu and has not committed the alleged offences. That she has been implicated in the case FIR in question on the basis of a false and frivolous complaint of the respondent No.2. That the respondent No.2 being the alleged

complainant in the case FIR has actually filed the false and frivolous complaint resulting in the registration of the case FIR in question with a view to hide his own misdeeds as he trespassed into the house of the applicant and assaulted her. That initially, the FIR was registered by the respondent No.1 under Sections 304(2), 115(2), 126(2), 352 and 3(5) of the BNS whereafter the petitioner along with her husband sought interim anticipatory bail order dated 24.11.2025 in their favour from the Court of learned 3rd Additional Sessions Judge, Jammu. That however, the respondent No.1 with the sole intention to defeat the said bail order, added Section 143(4)(5)(7) BNS relating to Trafficking of Persons and arrested her husband namely, Rifat Hussain Malik. That pursuant to the arrest of her husband, the anticipatory bail application was withdrawn from the Court of learned 3rd Additional Sessions Judge, Jammu. That thereafter, the Court of learned Chief Judicial Magistrate, Jammu vide his order dated 02.12.2025 passed on the application of her husband granted interim bail in his favour after perusing the objections of the respondents as well as the CD file. That the respondent No.1 again added the offences under Section 3(r)(s)(u) of the Act regardless of the fact that no such allegation was reflected in the basic complaint. That she approached the Court of learned Principal Sessions Judge, Jammu (Special Court under the Act) seeking *pre-arrest* bail which however was declined vide order dated 16.12.2025 of the said Court. That actually on 22.11.2025 at around 7:00 pm the respondent No.2 with criminal intention and for oblique motive trespassed into the house of the petitioner in her absence. That when she reached home, the respondent No.2 i.e. the alleged complainant started abusing and assaulting her. That she approached the police concerned with her grievance against the respondent No.2 but no action was taken by the

police concerned. That the special offences came to be added in the case FIR just to prevent her as well as her husband from obtaining the bail from the Court of the law. That she being a teacher has not committed the alleged offences. That she is presumed to be innocent under law and the burden of proving her guilt lies on the prosecution. That she is deeply rooted in the society being a teacher and as such, she shall be highly disreputed in the society in case of her arrest on false and frivolous allegations. That she shall abide by any conditions that may be imposed by this Court. That there is no question of her misusing the concession of her bail by her non-cooperation during investigation. That she has no criminal antecedents and has been falsely implicated in the case FIR.

3. The respondents 2 and 3 including the complainant filed their detailed objections in respect of the bail petition. They have resisted the bail application on the grounds that the petitioner is involved in the commission of heinous non bailable offences, who does not deserve any concession of bail. That two minor daughters of the respondent No.3-Mohd. Shafi were taken by the petitioner and her husband through the hands of the Nambardar of the village Mori Banjor Tehsil Bounjwah, District Kishtwar on the pretext of providing them better education. That however, instead of enrolling the minors at Bounjwah as assured, she and her husband clandestinely shifted the minor girls to their home at Jammu without the consent or information of their parents. That whenever the respondent No.3 i.e. father of the minor girls used to talk the husband of the petitioner regarding the welfare of her minor daughters, he was always being asked that they are fine and studying so he should not call unnecessarily. That none of the minor girls was admitted to any school at Kishtwar or at Jammu as enquired by the police during the investigation of the case. That it has surfaced

during investigation of the case that the minor girls of the respondent No.3 were brought with fraudulent intention and were illegally detained for the purpose of extracting household labour especially doing of manual scavenging. That during the entire period, the petitioner and her husband intentionally and willfully prevented the minor daughters of the respondent No.3 from communicating with him or any other family member. That one day prior to the incident, the elder minor daughter of the respondent No.3 managed to contact her father from an unknown mobile number, which later transpired to belong to a labourer working at the residence of the petitioner. That during the said call, the minor narrated the entire ordeal and disclosed the inhuman treatment meted out to her and her sister. That alarmed by the said disclosure, the respondent No.3 immediately rushed to Jammu on 22.11.2025 to take his daughters back and reached the petitioner's house with the assistance of respondent No.2____an auto driver. That upon reaching the spot, it was found that the house was locked from the outside and only the two minor daughters were confined inside. That when the respondent No.3 contacted Rifat Hussain____the husband of the petitioner, he falsely claimed that he was a Kishtwar and the minors were also with him there. That astonishingly, the petitioner arrived at the spot shortly and in a fit of rage started physically assaulting the respondent No.2 while uttering insulting and humiliating words i.e. *'Tu Is Ko Yahan Kyon Laya'* . That minutes thereafter Rifat Hussain, husband of the petitioner also arrived along with some unknown persons and collectively assaulted and abused the respondent No.3 in filthy, derogatory and caste-based language humiliating him in public view. That the entire incident occurred on the public road outside the petitioner's residence. That during that scuffle some army personnel from Sunjawan Military Station

located merely a few meters away, intervened and restrained the petitioner and her husband from further assaulting the private respondents. That during investigation it came to be unequivocally revealed that both the minor daughters of the respondent No.3 were subjected to brutal physical torture and continuous abuse. That the acts committed by the petitioner and her husband, who is co-accused in the case, are grave, heinous and have shaken the conscience of the society in general and the SC/ST category in particular.

4. The learned counsel for the petitioner during his arguments submitted that petitioner being a lady and a teacher deserves to be granted the concession of pre-arrest bail in the case FIR as she is innocent and has not committed the alleged offences. The learned senior counsel for the petitioner contended that it is the respondent No.2 some auto driver, who actually committed the offences of house trespassed and criminal intimidation as regards, the petitioner and her husband. That the petitioner also approached the concerned police station with her grievance but she was turned a deaf ear. That the commission of the alleged offence under Section 3(r)(s)(u) of the **Act** is not attracted in the facts and circumstances of the prosecution case itself because firstly it is revealed from the basic complaint filed by the respondent No.2 first in point of time with the police station concerned that the alleged derogatory words were uttered by the husband of the petitioner and that too inside the house premises and not in the public view. He contended that the provisions of Section 18 of the **Act** are not attracted in the facts and circumstances of the case as no offence at all under the **Act** *prima facie* appears to have been committed by the petitioner or even by her husband. The learned senior counsel further contended that since the commission of the alleged offence under Section 3(r)(s)(u) of the **Act** does not

seem *prima facie* committed by the petitioner in the light of the case of the complainant/respondent No.2 himself, as such, the petitioner is not needed to file an appeal before this Court in terms of provisions of Section 14-A of the **Act**. The learned senior counsel submitted that even if for arguments sake, the petitioner was needed to prefer an appeal against the order of the rejection of bail dated 16.12.2025 of the learned Principal Sessions Judge, Jammu in terms of Section 14-A of the **Act** yet this Court is within its competence to treat the present application as an appeal. He submitted that no format is provided under the Act for preferring an appeal.

5. The learned counsel for the petitioner in support of his arguments placed reliance on the authoritative judgments of the Hon'ble Supreme Court of India cited as '*Kiran Vs. Raj Kumar Jivraj Jain & Anr.*' 2025 Live Law (SC) 869 and '*M/S Pepsi Foods Limited Vs. Special Judicial Magistrate*', 1998 AIR SC 128.

6. *Per contra*, the learned counsels for the respondents vehemently contended that the present bail application is not maintainable in view of the provisions of Section 14-A read with Section 18 of the **Act**. They contended that the petitioner had earlier approached the Special Court under the Act with an application for grant of anticipatory bail in her favour which came to be dismissed vide order dated 16.12.2025 of the said Court. That as per the provisions of Section 14-A of the Act, the petitioner was required to prefer an appeal to this Court against the order of the learned Special Court dated 16.12.2025. That petitioner instead has preferred a successive bail petition under the same provisions of Section 482 BNSS which is not maintainable. The learned counsel also contended that the Section 18 of the Act bars grant of anticipatory in the offences under the Act.

7. The learned counsels in support of their contentions placed reliance on the judgments of the High Court of Judicature at Allahabad and the High Court of Punjab and Haryana at Chandigarh respectively cited as '*Sunil Dutt Sharma Vs. State of U.P. & Anr.*' 438 CR.P.C. No.9396 of 2022 decided on 30.09.2022 and '*Sukhdeep Singh Vs. State of Punjab*' CRM-M No.27873/2022 decided on 01.07.2022.

8. Since, the learned counsels for the respondents have resisted the instant bail petition on the legal ground of being not maintainable in its present form as such, this Court is required to address the said issue in the first instance.

9. Admittedly, the provisions of Section 18 of the Act bar the grant of anticipatory bail to any person accused of having committed an offence under the Act. However, this Court is in full agreement with the contention of the learned counsel for the petitioner to the effect that the bar under Section 18 of the Act which excludes the application of Section 438 Cr.P.C. corresponding to Section 482 BNSS is not absolute. Admittedly, court is required to verify the complainants averments and determine if a *prima facie* case is established. This Court is also in agreement with the contention of the learned counsel for the petitioner that for an alleged act of a person to constitute the offence's under Section 3(r)(s) of the **Act** there should be intentional insult or intimidation or abuse uttered to a member of a Scheduled castes or Scheduled Tribe in any place within public view. The Hon'ble Apex Court has also laid down the same proposition of the law in its judgment cited as '*Kiran Vs. Raj Kumar Jivraj Jain & Anr.*' 2025 Live Law (SC) 869 relied upon by the learned counsel for the petitioner.

10. The learned counsel for the petitioner during his arguments while placing reliance on the authoritative judgment of the Hon'ble Supreme Court of India cited as '*M/S Pepsi Foods Limited Vs. Special Judicial Magistrate*', 1998 AIR SC 128 contended that nomenclature under which a petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory.

11. On the other side, it has also been held by the Hon'ble High Courts of Allahabad and Punjab and Haryana in the judgments hereinbefore referred to that order granting or rejecting the anticipatory bail under the provisions of the Act shall be amenable to appellate jurisdiction of the High Court under Section 14-A of the Act and not under Section 438 Cr.P.C. corresponding to Section 482 BNSS.

12. It is profitable to reproduce the provisions of Sections 14-A and 18 of the Act for the sake of convenience:-

“14-A. Appeals (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) , an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section(3) of Section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal].

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.”

13. The provisions contained under the Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 providing for bar of anticipatory bail in respect to the apprehended arrest of a person accused of commission of offences under the Act and under Section 14-A of the Act regarding filing of an appeal to this Court against an order of the Special Court granting or refusing bail, are intended to uphold the Act’s objective of protecting vulnerable SC/ST communities and ensuring social justice.

14. Although a Special Court can consider the grant of anticipatory bail to a person accused of commission of the offences under the SC/ST Act if *prima facie* ground is made out for presuming that he or she has not

committed such offences yet a person aggrieved of the finding of the Special Court by way of grant or refusal of such pre-arrest bail concession cannot file a successive application before this Court in terms of the similar provisions of Section 438 Cr.P.C. corresponding to Section 482 BNSS but has necessarily to prefer an appeal to the High Court if he or she so chooses. The filling of an appeal is mandatory as per provisions of the Section 14-A of the Act.

15. This Court in the facts and circumstances of the instant case involving the applicability of a special legislation i.e. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not convinced to agree with the contention of the learned counsel for the petitioner that his application may be treated as an appeal. By filing a memorandum of appeal an appellant assails the finding of a Court below on some *facto legal* grounds but in a successive application the prayer is made for grant of relief without assailing the findings and appreciations of the Court below. Special procedures are often provided in sensitive matters for upholding the aim and objective of any special legislation. Treating the successive bail petition of the petitioner as an appeal against the order of the Special Court dated 16.12.2025 will amount to overriding the special legislation.

16. For the foregoing discussion, the instant bail petition is *dismissed* as being not maintainable. However, the petitioner is at liberty to prefer an appeal in terms of provisions of Section 14-A of the Act against the order dated 16.12.2025 of the learned Special Court before this Court if she so chooses. At the same time, in view of ensuing winter vacations, the petitioner in the ends of justice is being insulated from her arrest in the case FIR in question for a period

of **16 days** from the date the order is uploaded within which period she shall prefer the requisite appeal if she so requires. If the petitioner chooses to file an appeal within the above time, the special protection order shall be substituted by the order passed in such appeal. However, if the petitioner does not prefer an appeal within the period allowed, the special protection shall automatically stand vacated without further reference to the Court.

17. Disposed of.

(Mohd. Yousuf Wani)
Judge

Jammu
27.12.2025
Shammi

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes

