

* **HONOURABLE SRI JUSTICE T.SUNIL CHOWDARY**

+ CRIMINAL PETITION No.7468 of 2017

% Date: 25.10.2017

Rajulapati Ankababu, S/o.Madhava Rao

... Petitioner-A2

and

\$ The State of Andhra Pradesh, represented by
its Public Prosecutor, High Court of Judicature at Hyderabad

... Respondent-
Complainant

! Counsel for the petitioner : Sri C.Sharan Reddy

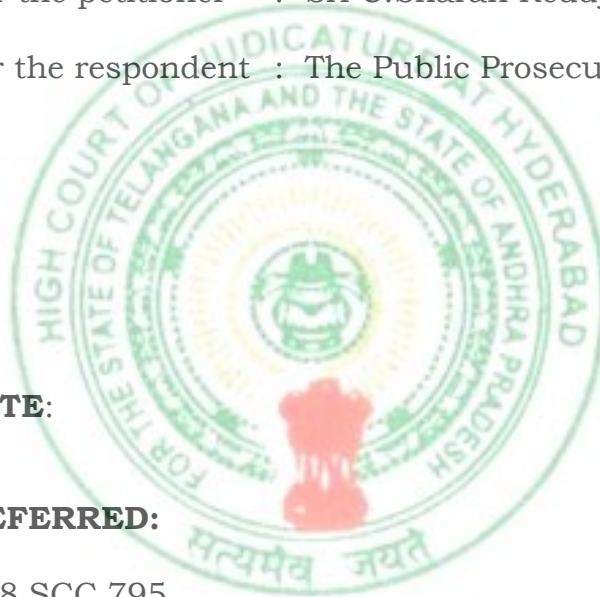
^ Counsel for the respondent : The Public Prosecutor

< **GIST:**

➤ **HEAD NOTE:**

? **CASES REFERRED:**

1. (2012) 8 SCC 795
2. (2014) 15 SCC 521
3. (1982) 3 SCC 516
4. (1984) 2 SCC 500 : AIR 1984 SC 718
5. (1999) 3 ALT 533
6. (2004) 4 SCC 584
7. (2000) 2 SCC 504
8. (2003) 2 SCC 649
9. (2014) 8 SCC 273
10. 2017 SCC Online Hyd 198
11. 2015 (2) ALD (CrI.) 141 (AP) = 2015 (2) ALT (CrI.) 349 (AP)
12. (1976) 4 SCC 572



THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.7468 of 2017

ORDER:

This criminal petition is filed by the petitioner-accused No.2, under Section 438 of Cr.P.C., to grant pre-arrest bail in Crime No.62 of 2016 on the file of the Station House Officer, Maredimilli Police Station, East Godavari District, registered for the offences punishable under Sections 323, 506, 385, 354-A of IPC and Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter after referred to as, the SC/ST Act).

2. The case of the prosecution is that prior to October, 2016, some people came to Chinthakoyya Village of Y.Ramavaram Mandal and enquired the villagers about availability of antique gold coins. In that process, they also enquired *de facto* complainant for antique gold coins for which he pleaded ignorance. While so, on 03.10.2016, accused No.1, who is a Police Constable, came to the house of *de facto* complainant, forcibly took Rs.40,000/- kept in the house and also took him to Maredimilli Police Station. At that time, accused Nos.3 and 4 came to the Police Station and demanded *de facto* complainant for antique gold coins and if he did not give them, accused No.4 will lodge a complaint with the petitioner, who is the Inspector of Police, as if he has given Rs.4,00,000/- to *de facto* complainant for procuring antique gold coins. According to *de facto* complainant, accused No.4 never came to their village. On the next day, accused No.3 came to the house of *de facto* complainant and demanded an

amount of Rs.2,40,000/- for not registering a case against him, besides sending wife of *de facto* complainant to satisfy his lust. On 05.10.2016, *de facto* complainant gave Rs.2,00,000/-, which was drawn from Andhra Bank account of his mother-in-law, to accused No.3, who in turn gave it to the petitioner. The petitioner threatened *de facto* complainant not to disclose the same to anybody otherwise he will be implicated in a case under the provisions of the Narcotic Drugs and Psychotropic Substances Act. It is the further case of the prosecution that the accused persons did the above acts knowing fully well that *de facto* complainant belongs to a Scheduled Tribe.

3. Sri C.Sharan Reddy, learned counsel for the petitioner strenuously submitted that the *de facto* complainant filed a false complaint against the petitioner, who is an Inspector of Police, for the reasons best known him. He further submitted that even if the allegations made in the complaint are *ex facie* taken to be true and correct, no *prima facie* case is made out against the petitioner for the alleged offences more particularly under Section 3(2)(va) of the SC/ST Act; therefore, it is a fit case to grant pre-arrest bail to the petitioner. He further submitted that the Investigating Officer, during the course of investigation, has to follow the procedure as contemplated under Section 41A of Cr.P.C., even though offence is registered under Section 3(2)(va) of the SC/ST Act, in view of Sub-section (2) of Section 4 of Cr.P.C. ***Per contra***, learned Public Prosecutor submitted that all the offences alleged to have been committed by the petitioner are bailable; therefore, the petition under Section 438 of Cr.P.C., is not maintainable. He further

submitted that Section 438 of Cr.P.C., has no application to the offences committed under the provisions of the SC/ST Act, in view of Section 18 of the SC/ST Act.

4. In order to appreciate the rival contentions, it is inexorable to consider various provisions of Cr.P.C., in touchstone with the provisions of the SC/ST Act.

5. The Parliament felt that the existing laws like the Protection of Civil Rights Act, 1955, and the general provisions of IPC have somewhat become redundant in preventing the atrocities against the persons belong to SC/ST. In order to achieve the underlying object of social justice, as enshrined in the Constitution of India, the Parliament enacted the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act in the year 1989 with an avowed object of protecting the dignity of the persons belong to the SC/ST communities from the people belong to the other communities. The statement of objects and reasons of the SC/ST Act indicates that these people were being subjected to squalor, in the hands of the people other than the SC/ST communities, simply because they belong to SC/ST community.

6. The word 'atrocities' is not specifically defined under the SC/ST Act. What exactly constitutes an atrocity, as contemplated under the SC/ST Act, has to be gathered from the provisions of the SC/ST Act. As per Section 2(1)(a) of the SC/ST Act 'atrocities' means an offence punishable under Section 3 of the SC/ST Act. Section 3 is heart and soul of the SC/ST Act, which encompasses in it, certain acts done by a non-SC/ST person towards an SC/ST

person, willfully and intentionally humiliating that person, knowing fully well that such person belongs to SC/ST. To put it in a different way, various provisions of the SC/ST Act revolve around Section 3. Sections 3 and 4 are the penal provisions.

7. Experiencing the difficulties faced in curtailing the atrocities against the SC/ST community, even after enactment of the SC/ST Act and taking note of the present day scenario as well as for more effective implementation of the SC/ST Act, the Parliament has made certain amendments to the SC/ST Act, in the year 2016, and one such insertion is Section 3(2)(va) of the SC/ST Act.

8. At this juncture, the pristine question that crops up for consideration is, whether the offence committed under Section 3(2)(va) of the SC/ST Act is bailable or not. If the answer is in the affirmative, the corollary question that germane for consideration is, whether the petitioner is entitled to seek pre-arrest bail under Section 438 of Cr.P.C. A perusal of Section 18 of the SC/ST Act, at a glance, clearly demonstrates that Section 438 of Cr.P.C., has no application in respect of an offence alleged to have been committed under the provisions of the SC/ST Act.

9. In order to resolve the issue, this Court is placing reliance on the judgment of the Hon'ble apex Court in **Vilas Pandurang Pawar v. State of Maharashtra**¹, wherein it was held in paragraph Nos.1, 9 and 10 as follows:

1. The short question to be decided in this petition is whether an accused charged with various offences under the Penal Code, 1860 (in short "IPC") along with the provisions of the Scheduled Castes and the Scheduled

¹ (2012) 8 SCC 795

Tribes (Prevention of Atrocities) Act, 1989 (in short “the SC/ST Act”) is entitled for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (in short “the Code”).

9. 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 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.

10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it *prima facie* finds that such an offence is not made out. 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.

10. In **Shakuntla Devi v. Baljinder Singh**², the Hon’ble apex Court held at paragraph No.4 as follows:

4. The High Court has not given any finding in the impugned order that an offence under the aforesaid Act is not made out against the respondent and has granted anticipatory bail, which is contrary to the provisions of Section 18 of the aforesaid Act as well as the aforesaid decision of this Court in *Vilas Pandurang Pawar v State of Maharashtra*, (2012) 8 SCC 521. Hence, without going into the merits of the allegations made against the respondent, we set aside the impugned order of the High Court granting bail to the respondent.

11. As per the principle enunciated in the cases cited supra, if the allegations made in the complaint *prima facie* do not constitute any offence punishable under Sections 3 and 4 of the SC/ST Act, anticipatory bail application under Section 438 of Cr.P.C., is maintainable. Despite specific bar created under Section 18 of the

² (2014) 15 SCC 521

SC/ST Act, the competent Court can entertain and grant pre-arrest bail, under Section 438 of Cr.P.C., in respect of the allegations made under the provisions of the SC/ST Act, if the exigencies so warrant.

12. It is needless to say that the provisions of the Cr.P.C., which is the parent statute, provides the procedure to be followed by the Investigating Agency and the Courts, during the course of investigation, inquiry and trial, as the case may be. The crucial question that falls for consideration is whether the provisions of Cr.P.C., are *mutatis and mutandis* applicable to the cases registered under the provisions of the SC/ST Act, for the purposes of investigation, inquiry and trial. The SC/ST Act is a special enactment. It is not much in dispute with regard to the proposition of law that when there is a conflict between the provisions of the Cr.P.C., and the special Act, the provisions enumerated under the special Act will prevail over the Cr.P.C.

13. It is needless to say that the definitions of an Act are the beacon-light to understand the letter and spirit of the other provisions of the Act. Before proceeding further, I am of the considered view that it is necessary to refer relevant provisions of the Cr.P.C., and the SC/ST Act. Section 2(1)(b) & (f) of the SC/ST Act read as follows:

2. Definitions, -

(1) In this Act, unless the context otherwise requires, -

(b) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974);

(f) the words and expressions used but not defined in this Act and defined in the Indian Penal Code (45 of 1860), the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), as the case may be,

shall be deemed to have the meanings respectively assigned to them in those enactments.

14. A conjoint reading of the above two provisions clearly demonstrates that the words and expressions as used in Cr.P.C., are applicable, with the same force and vigour, to the SC/ST Act unless contrary meaning is assigned to the same word or expression under the SC/ST Act.

15. Section 4(1) of Cr.P.C., provides the procedure to be followed while conducting investigation by the Investigating Officer, and inquiry or trial by the Courts, for the offences under the IPC.

Section 4(2) of Cr.P.C., reads as follows:

4. Trial of offences under the Indian Penal Code and other laws:-

(1) ...

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

16. A cursory reading of the above sub-section reveals that the procedure contemplated under Cr.P.C., is equally applicable to the cases triable under a special enactment unless there is a specific provision under the special enactment.

17. This Court is placing reliance on the following decisions:

(i) **Mirza Iqbal Hussain v. State of U.P.**³, wherein the Hon'ble apex Court held at paragraph No.2 as follows:

2. In this appeal by special leave, the only point raised by Mr Bana on behalf of the appellant is that the learned Special Judge had no jurisdiction to pass an order of confiscation. We see no substance in this contention. Section 4(2) of the Code of Criminal Procedure provides that

³ (1982) 3 SCC 516

all offences under any law other than the Indian Penal Code shall be investigated, inquired into, tried and “otherwise dealt with according to the provisions contained in the Code of Criminal Procedure, but subject to any enactment for the time being in force regulating the manner or place of investigation, enquiring into, trying or otherwise dealing with such offences”. It is clear from this provision that insofar as the offences under laws other than the Indian Penal Code are concerned, the provisions of the Code of Criminal Procedure apply in their full force subject to any specific or contrary provision made by the law under which the offence is investigated or tried.

(ii) **A.R.Antulay v Ramdas Srinivas Nayan**⁴, wherein a Constitution Bench of the Hon’ble apex Court held at paragraph No.16 as follows:

16. Section 4(2) provides for offences under other law which may be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure. In other words, Code of Criminal Procedure is the parent statute which provides for investigation, inquiring into and trial of cases by criminal courts of various designations.

(iii) **Referring Officer rep. by State of A.P., by Public Prosecutor v Shekar Nair @ Guru**⁵, wherein this Court held at paragraph Nos.19 and 20 as follows:

19. Referring to Sections 4(2) and 5 of Cr.P.C., the Supreme Court in **Directorate of Enforcement v. Deepak Mahajan**, 1994 CriLJ 2269, summed up the legal position as follows:

"To sum up Section 4 is comprehensive and that Section 5 is not derogation of Section 4(2) and it only relates to the extent of application of the Code in the matter of territorial and other jurisdiction but does not nullify the effect of Section 4(2). In short, the provisions of this Code would be applicable to the extent in the absence of any contrary provision in the Special Act or any special provision excluding the jurisdiction or applicability of the Code. In fact, the second limb of Section 4(2) itself limits the application of the provisions of the Code reading".....but subject to any enactment for the time being in

⁴ (1984) 2 SCC 500 : AIR 1984 SC 718

⁵ (1999) 3 ALT 533

force regulating the manner or place or investigating, inquiring into, trying or otherwise dealing with such offences"

20. It was further observed:

"The operation of Section 4(2) of the Code is straight away attracted to the area of investigation, inquiry and trial of the offences under the special laws including the FERA and Customs Act and consequently Section 167 of the Code can be made applicable during the investigation or inquiry of an offence under the special Acts also inasmuch as there is no specific provision contrary to that excluding the operation of Section 167".

18. The learned Public Prosecutor, in support of his submission, has drawn the attention of this Court to the following decision:

Moly v. State of Kerala⁶, wherein the Hon'ble apex Court held at paragraph Nos.9 and 10 as follows:

9. So it is for trial of the offences under the Act that a particular Court of Session in each district is sought to be specified as a Special Court. Though the word "trial" is not defined either in the Code or in the Act it is clearly distinguishable from inquiry. The word "inquiry" is defined in Section 2(g) of the Code as "every inquiry, other than a trial, conducted under this Code by a Magistrate or court". So the trial is distinct from inquiry and inquiry must always be a forerunner to the trial. The Act contemplates only the trial to be conducted by the Special Court. The added reason for specifying a Court of Session as a Special Court is to ensure speed for such trial. "Special Court" is defined in the Act as "a Court of Session specified as a Special Court in Section 14" [vide Section 2(1)(d)].

10. Thus the Court of Session is specified to conduct a trial and no other court can conduct the trial of offences under the Act. Why did Parliament provide that only a Court of Session can be specified as a Special Court? Evidently, the legislature wanted the Special Court to be a Court of Session. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fasciculus of provisions for "trial before a Court of Session".

19. The same principle was reiterated by the Hon'ble apex Court in paragraph No.13 of the judgment in **Gangula Ashok v State of A.P.**⁷.

⁶ (2004) 4 SCC 584

20. As per the principle enunciated in the cases cited supra, the provisions of Cr.P.C., are equally applicable for investigation, inquiry and trial of the offences under any other special or local Act, unless such special or local Act provides a specific provision for that purpose.

21. Let me consider the provisions of the SC/ST Act, in the light of the above legal principles.

22. Under the provisions of the Cr.P.C., the Station House Officer will conduct investigation into a cognizable offence. Rule 7 of the SC/ST Rules, 1995 mandates that the Deputy Superintendent of Police alone is competent to investigate into the offences committed under the SC/ST Act. This provision is a clear-cut departure to the Cr.P.C., so far as the rank of the Investigating Officer in conducting investigation is concerned. Section 26 of Cr.P.C., deals with the Court which is competent to conduct trial of the offences under IPC and of the offences under any other law. It is not out of place to extract hereunder clause (b) of Section 26 of Cr.P.C.

26. Courts by which offences are triable:

(a) ...

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by :

(i) the High Court, or

(ii) any other Court by which such offence is shown in the First Schedule to be triable.

23. Section 26(2) of Cr.P.C., enables the Courts constituted under the Cr.P.C., to conduct inquiry or trial in respect of the offences committed under a special enactment provided if such Act

⁷ (2000) 2 SCC 504

is silent with regard to the forum. A fascicular reading of Section 2(bd) and Section 14 of the SC/ST Act clearly demonstrates that a Special Court constituted under this Act alone is empowered to conduct trial of the offences alleged to have been committed under this Act. Section 14A of the SC/ST Act provides the appellate forum to challenge an order of the Special Court and stipulates the period of limitation to prefer appeal. The second proviso to Sub-section (1) of Section 14 of the SC/ST Act reads as follows:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

24. A perusal of the above provision clearly demonstrates that Section 209 of Cr.P.C., has no application to the offences committed under the SC/ST Act. In other words, the Special Court can directly take cognizance of offence. Section 18 of the SC/ST Act excludes the application of Section 438 of Cr.P.C., for the offences committed under the SC/ST Act. It is needless to say that Section 360 of Cr.P.C., enables the Court to release the accused on probation of good conduct or after admonition. In view of Section 19 of the SC/ST Act, Section 360 of Cr.P.C., and the provisions of Probation of Offenders Act, 1958 have no application in respect of the offences committed the SC/ST Act.

25. Having regard to the principles enunciated in the cases cited supra, the provisions of the SC/ST Act referred supra are exceptions to the Cr.P.C. To put it in a different way, certain provisions of Cr.P.C., are not applicable for the offences committed under the SC/ST Act so far as investigation, inquiry and trial are

concerned, in view specific machinery provided under the SC/ST Act.

26. The learned Public Prosecutor submitted that arrest of an accused forms an integral part of investigation. To fortify his submission, he has drawn the attention of this Court to the following decision:

27. In **M.C. Abraham v State of Maharashtra**⁸, the Hon'ble apex Court held at paragraph No.14 as follows:

14. Tested in the light of the principles aforesaid, the impugned orders dated 10-1-2002 and 11-1-2002 must be held to be orders passed by overstepping the parameters of judicial interference in such matters. In the first place, arrest of an accused is a part of the investigation and is within the discretion of the investigating officer. Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the court has no role to play. Since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. Obviously, the power has to be exercised with caution and circumspection.

28. Sections 41A to 41D of Cr.P.C., were added by way of amendment to Cr.P.C., by Act 5 of 2009. These provisions came

⁸ (2003) 2 SCC 649

into force with effect from 01.11.2010. In **Arnesh Kumar v State of Bihar**⁹, the Hon'ble apex Court, while considering the scope of Sections 41 and 41A of Cr.P.C., held at paragraph Nos.10, 11, 12 and 13 as follows:

10. We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

⁹ (2014) 8 SCC 273

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.

13. We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance.

29. As per the principle enunciated in the case cited supra, the Investigating Officer has to follow the procedure as contemplated under Section 41A of Cr.P.C., while investigating the offences for which the punishment prescribed is below seven years or upto seven years.

30. In **Konidhana Ananda Sharma v State of A.P.**¹⁰, this Court had an occasion to consider the question as to whether the bail bonds produced before the Investigating Officer are not sufficient for the purpose of committing the case to the Court of Session. While answering the question, at paragraph No.8 the following observations are made:

8. The offences alleged in the instant case are under Sec.323, 506 IPC and Sec.3(1)(x) of SC, ST (POA) Act, 1989. All the aforesaid offences are punishable with a term less than 7 years. Therefore, the procedure contemplated under Sec.41 and 41-A Cr.P.C, squarely apply to them and those Sections have not made any express distinction between the offences punishable under IPC and other Special enactments. Therefore, the contra view expressed by learned Addl. Junior Civil Judge, is incorrect. The explanation of the SDPO Madanapalle dated 13.04.2017 shows that since the offence was punishable below 7 years of imprisonment and as the accused had not failed to comply with the terms of notice under Sec.41-A Cr.P.C, the I.O did not consider it necessary to arrest the accused.

¹⁰ 2017 SCC Online Hyd 198

Therefore, the I.O granted station bail by securing the bail bonds of the sureties on behalf of the accused. This procedural order under Sec.41-A Cr.P.C cannot be equated with an order passed by a Court under Sec.438 Cr.P.C. Therefore, in my view, there is no procedural violation. Consequently, the committal Court is directed to submit the bail bonds produced before the I.O by the accused and sureties to the Special Sessions Judge-cum-IV Additional District Judge, Tirupati, in which case they shall be deemed to be the due compliance under Sec.209(a) of Cr.P.C by the Sessions Court.

31. The core issue which falls for consideration at this juncture is whether the Investigating Officer has to follow the procedure as contemplated under Section 41A of Cr.P.C., while conducting investigation in respect of the offences alleged to have been committed under the provisions of the SC/ST Act.

32. The SC/ST Act came into force with effect from 30.1.1990. Section 41A of Cr.P.C., was introduced in the year 2010. The Parliament was very much aware of the provisions of the SC/ST Act at the time of introducing Section 41A of Cr.P.C., in the year 2010. Had it been the intention of the Parliament to exclude the application of Section 41A of Cr.P.C., in respect of the offences committed under the SC/ST Act, the same might have been reflected in the Cr.P.C. There is no specific provision under the SC/ST Act, excluding the application of Section 41 of Cr.P.C. The Parliament amended the provisions of the SC/ST Act, by way of Amendment Act 1 of 2016 by introducing certain provisions. The Parliament is very much aware of existence of Section 41A of Cr.P.C., at the time of making suitable amendments to the SC/ST Act. It is a settled principle of law that the provisions of Cr.P.C., are applicable to the Special Acts so far as the investigation, inquiry and trial are concerned, unless there is specific provisions

under the Special Act. Even under the amended Act, there is no provision which specifically excludes the application of Section 41A of Cr.P.C., in respect of offences committed under the SC/ST Act.

33. Having regard to various provisions of the Cr.P.C., and the SC/ST Act referred supra, and the principle enunciated in **Arnesh Kumar**, I am of the considered view that Section 41A Cr.P.C., in letter and spirit, is applicable to the offences committed under the SC/ST Act if the offence is punishable with imprisonment for a term which may be less than seven years or which may extend upto seven years, whether with or without fine.

34. Reverting to the facts of the case on hand, the present case was registered for the offences punishable under Sections 323, 506, 385 and 354A of IPC and Section 3(2)(va) of the SC/ST Act. A petition under Section 438 of Cr.P.C., is not maintainable if the offence/offences alleged to have been committed by the accused is/are bailable. According to Clause (b) of Section 2 of Cr.P.C., '*bailable offence*' means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force and non-bailable offence means any other offence. The point, which has to be considered at this stage, is whether the offences alleged to have been committed by the accused are bailable or non-bailable. In paragraph No.4 of the petition, the petitioner himself stated that Sections 323, 506, 385 and 354A of IPC are bailable offences. Thus remains the offence under clause (va) of Sub-section (2) of Section 3 of the SC/ST Act. Clause (va) was inserted in the SC/ST Act by Act 1 of 2016 with

effect from 26.1.2016 vide S.O.No.152(E), dated 18.1.2016, which reads as follows:

3. Punishments for offences of atrocities,-

(2) Whoever, not being a member of Scheduled Caste or Scheduled Tribe,-

*(va) commits any offence specified in the Schedule, against a person or property, **knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member**, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine.*

35. A perusal of the above clause, at a glance, indicates that if any person commits an offence as mentioned under the Schedule (IPC offences), such an accused shall be prosecuted under Section 3(2)(va) of the SC/ST Act also. The Schedule contains the offences under Sections 120A, 120B, 141, 142, 143, 144, 145, 146, 147, 148, 217, 319, 320, **323**, 324, 325, 326B, 332, 341, 354, **354A**, 354B, 354C, 354D, 359, 363, **365**, 376B, 376C, 447, **506** and 509 of IPC.

36. The punishment prescribed for the offences alleged in this case is as follows:

Section	Offence	Punishment
323 of IPC	Voluntarily causing hurt	Imprisonment for one year, or fine of 1,000 rupees, or both.
506 of IPC	Criminal intimidation	Imprisonment for 2 years, or fine, or both.
	If threat be to cause death or grievous hurt, etc.	Imprisonment for 7 years, or fine, or both.
385 of IPC	Putting or attempting to put in fear of injury, in order to commit extortion.	Imprisonment for 2 years, or fine, or both.
354A of IPC	Sexual harassment of the nature of unwelcome physical contact and advances or a demand or request for sexual favours,	Imprisonment which may extend to 3 years or with fine or with both.

	showing pornography. Sexual harassment of the nature of making sexually coloured remark.	Imprisonment which may extend to 1 year or with fine or with both.
3(2)(va) of SC/ST Act	Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe belongs to such member,	shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine.

37. The punishment prescribed for the offences under Section 3(1) of the SC/ST Act is not less than six months but which may extend upto five years and with fine. The punishment prescribed under Clauses (i) to (vii) of Sub-section (2) of Section 3 of the SC/ST Act is as follows:

Clause under Section 3(2)	Punishment prescribed
(i)	Imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death.
(ii)	Imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine.
(iii)	Imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.
(iv)	Imprisonment for life and with fine.
(v)	Imprisonment for life and with fine.
(va)	Fine.
(vi)	The punishment provided for that offence (for which the evidence was screened).
(vii)	Imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

38. The learned counsel for the petitioner submitted that the petitioner had no knowledge about the caste of the *de facto* complainant; therefore, *prima facie* no case is made out against the petitioner for the offence under Section 3(2)(va) of the SC/ST Act. Countenancing the above contention, the learned Public Prosecutor has drawn the attention of this Court to clause (c) of Section 8 of the SC/ST Act, which reads as follows:

8. Presumption as to offences.- In a prosecution for an offence under this Chapter, if it is provided that –

(a) ...

(b) ...

(c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved.

39. The learned Public Prosecutor further submitted that the offence is committed in the notified area wherein almost all the inhabitants belong to Scheduled Tribe; therefore, the submission of the learned counsel for the petitioner cannot be accepted, in view of the above presumption. A perusal of Section 8(c) of the SC/ST Act in juxtaposition with Section 3(2)(va) of the SC/ST Act makes it clear that the Court can draw a presumption that the accused has knowledge that the victim belongs to SC/ST community unless the contrary is proved. Whether the petitioner committed the alleged offence knowing fully well that the *de facto* complainant belongs to Scheduled Tribe or not would become a relevant issue after full-fledged trial only. It is needless to say that while deciding the interlocutory applications more particularly the bail petitions, the Court has to restrain itself to express any opinion more particularly on factual aspects which ultimately affects the merits

of the main case. At this stage, the Court has to consider whether the allegations made in the complaint *prima facie* constitute the offences alleged to have been committed by the petitioner, for a limited purpose of granting or rejecting the bail.

40. The learned Public Prosecutor submitted that the offences alleged to have been committed by the petitioner are bailable; therefore, the petition is not maintainable. In support of the submission, he has drawn the attention of this Court to the judgment of this Court in **Thati Venkata Nagaraju v State of A.P.**¹¹, wherein it was held at paragraph No.9 (Manupatra) as follows:

9. In the second part of the first schedule to Cr.P.C., which deals with classification of offences against other laws, it is stated that if the offences are punishable with imprisonment for less than three years or with fine only, the same is bailable, non-cognizable and triable by any Magistrate. Section 18 of the Act states that nothing in Section 438 Cr.P.C. shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under the Act. From a reading of Section 18 of the Act, it is clear that bar under Section 438 Cr.P.C. shall apply when a person commits offences under the Act in which he is liable to be arrested. Arresting a person would arise only if he commits an offence which is non-bailable. Since the punishment prescribed under Section 4 of the Act is an imprisonment upto one year and in view of the First Schedule to the Cr.P.C., the said offence has to be treated as bailable.

41. As per the principle enunciated in the case cited supra, the offence punishable under Section 4 of the SC/ST Act is a bailable offence; therefore, the petition under Section 438 of Cr.P.C., is not maintainable.

42. The schedule under Section 3(2)(va) of the SC/ST Act is silent whether the offence is bailable or not. Part-I of the First Schedule under the Cr.P.C., classifies the offences under the IPC

¹¹ 2015 (2) ALD (CrI.) 141 (AP) = 2015 (2) ALT (CrI.) 349 (AP)

as (a) cognizable or non-cognizable, (b) bailable or non-bailable; and (c) the Court by which the offence abetted is triable. Part-II of the First Schedule classifies the offences against other laws and it reads as follows:

Offence	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
If punishable with death, imprisonment for life, or imprisonment for more than 7 years,	Cognizable	Non-bailable	Court of Session
If punishable with imprisonment for 3 years, and upwards but not more than 7 years,	Cognizable	Non-bailable	Magistrate of the first class
If punishable with imprisonment for less than 3 years or with fine only .	Non-cognizable	Bailable	Any Magistrate

43. There is no special provision indicating Section 3(2)(va) is a non-bailable offence. Therefore, one has to fall back to the Cr.P.C., in order to consider whether the offence under Section 3(2)(va) of the SC/ST Act is bailable or not. Part-II of the First Schedule, as mentioned supra, clearly reveals that the punishment prescribed for an offence under any law other than IPC is less than 3 years or with fine only, such an offence shall be treated as bailable. The punishment prescribed for the offence under Section 3(2)(va) of the SC/ST Act is fine only; therefore, it is a bailable offence. If there is no specific provision under the SC/ST Act, Sections 323, 506, 385, 354-A of IPC are triable by a Magistrate. The above offences are

shown in the Schedule annexed to Section 3(2)(va) of the SC/ST Act. By virtue of Section 14 of the SC/ST Act read with Section 26(b) of Cr.P.C., the above mentioned IPC offences are triable by a Special Court. Simply because the above offences are triable by a Special Court, that does not convert the bailable offences into non-bailable offences, in view of Part II of the First Schedule under Cr.P.C.

44. Having regard to the facts and circumstances of the case and also various provisions under the Cr.P.C., and the SC/ST Act, I am of the considered view that the offences under Sections 323, 506, 385, 354-A of IPC and Section 3(2)(va) of the SC/ST Act are bailable even though they are Schedule offences under Section 3(2)(va) of the SC/ST Act.

45. The next question that falls for consideration is whether the present bail petition is maintainable or not. It is needless to say that an accused person, who alleged to have committed a non-bailable offence, can approach the competent Court seeking pre arrest bail under Section 438 of Cr.P.C. A person who alleged to have committed a bailable offence is not entitled to file application under Section 438 of Cr.P.C., in view of the language deployed in it. Section 438 of Cr.P.C., can be invoked only in cases of non-bailable offences and not in cases of bailable offences, in view of the principle enunciated in **Balchand Jain v. State of M.P.**¹².

46. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the

¹² (1976) 4 SCC 572

considered view that the present petition is not maintainable under Section 438 of Cr.P.C. The petition lacks merits and bona fides.

47. In the result, the criminal petition is dismissed.

T.SUNIL CHOWDARY, J

25.10.2017

NOTE:

L. R. Copy be marked **YES** / NO

(By order)

YS

