

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 194 OF 2019

Lahu s/o. Vitthalrao Bhosale,
Age 43 years, Occu. Agri.,
R/o. Devangra, Tq. Chakur,
Dist. Latur.

....Appellant.

Versus

1. The State of Maharashtra,
Through the Police Station Officer,
Chakur Police Station, Chakur,
Tq. Chakur, Dist. Latur.

2. Udhav s/o. Vitthalrao Shinde,
Age 55 years, Occu. Service,
R/o. Devangra, Tq. Chakur,
Dist. Latur.

....Respondents.

Mr. N.D. Kendre with Mr. H.V. Patil, Advocates for appellants.

Mr. M.M. Nerlikar, APP for respondent No. 1/State.

Mr. V.V. Kabade, Advocate for respondent No. 2 (appointed).

**CORAM : T.V. NALAWADE AND
MANGESH S. PATIL, JJ.**
RESERVED ON : 28/03/2019.
PRONOUNCED ON : 03/04/2019

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is **admitted**. Notice after admission made returnable forthwith. Heard both the sides for final disposal.

2) The appeal is filed against the order made by the learned Special Judge appointed under the provision of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act' for short) and the appeal is filed under the provision of section 14-A of the Act. The application which was filed for relief of anticipatory bail by the appellant in C.R. No. 14/2019 registered with Chakur Police Station, Chakur, District Latur for offences punishable under sections 307, 341, 504, 506 of Indian Penal Code (hereinafter referred to as 'I.P.C.' for short) and section 3 (1)(r)(s) of the Act is rejected by the learned Special Judge.

3) The first informant Shri. Udhav Shinde and the appellant are resident of village Devangra, Tahsil Chakur, District Latur. One Laxman Bhosale is uncle of the appellant and Laxman is a friend of the first informant. The first informant owns a four wheeler and appellant also owns a four wheeler. The first incident took place on 3.1.2019 at about 6.10 p.m. It is the contention of the first informant, respondent that when he was returning from his agricultural land in his car, the car of the appellant came from backside and it tried to give dash to the car of first informant. It is contended that he somehow avoided the impact, but the car of appellant overtook his car and then by stopping the car in front of his car, the appellant made the first informant to stop the car. It is

contended that the appellant then started talking in threatening language and the appellant asked the first informant to convince Laxman Bhosale to make partition of the land and give the share to the appellant. It is the contention of the first informant that appellant gave threat of life and said that if his share is not given, he will finish not only Laxman, but also the first informant. It is contended that this incident was witnessed by some witnesses and their names are mentioned in the F.I.R. by the first informant. It is contended that on that occasion, the first informant had contacted father of the appellant and as the father had said sorry for the incident and he had requested not to take any action, he had not taken any action in respect of the incident dated 3.1.2019.

4) According to the first informant, on 11.1.2019 at 5.30 p.m. when he was returning from his field and when he was on his foot on Devangra road, the appellant drove his four wheeler at him and tried to finish him. According to him, he somehow jumped aside and saved himself. It is contended that on that occasion also, the appellant again gave threat of life and this incident was also witnessed by some witnesses. The names of these witnesses are mentioned in the F.I.R. It is contended that on both the occasions, the appellant wanted to finish him. In view of the nature of allegations, the crime was initially registered for offences punishable

under sections 307, 341, 504 and 506 of I.P.C.

5) On 13.1.2019 the first informant gave supplementary statement and in that statement, he contended that due to oversight, he did not mention in the report dated 11.1.2019 that he belongs to scheduled tribe and the appellant does not belong to scheduled caste or scheduled tribe and he is of Maratha caste. The first informant contended that the aforesaid incidents took place due to hate of appellant towards the first informant as he belongs to scheduled tribe. Along with the supplementary statement, he produced caste validity certificate. He informed that he had not sustained any visible injury on both the occasions.

6) The record of investigation shows that the first informant was working as Senior Police Inspector for Caste Scrutiny Committee, Gadchiroli. It is his contention that he was on leave at the relevant time and so, he was present at the native place. On the other hand, the learned counsel for appellant submitted that the first informant was suspended during that time due to his misconduct.

7) There are statements of witnesses who are named in the F.I.R. The statements show that the witnesses in respect of the incident dated 11.1.2019 say that they did not witness any incident.

There are statements of persons like Limbaji, Ramakant and Ankush in respect of the incident dated 3.1.2019, but they say that they only heard the conversation which was going on between the appellant and the first informant. According to them, the appellant was talking about the property dispute between him and his uncle, but in their presence, no threats were given and no abuses were given by the appellant to the first informant. Thus, in respect of the incident dated 3.1.2019 the witnesses say that no offence at all was committed. In respect of incident dated 11.1.2019 there are only allegations of the first informant and there is no corroboration of statements of any witnesses or circumstantial evidence. The police papers include the statement of Laxman Bhosale, uncle of the appellant and it shows that partition had taken place, but the names of the sharers were not entered in the revenue record.

8) The learned Special Judge has rejected the application filed by the present appellant for anticipatory bail by holding that there is bar of provision of section 18-A(2) of the Act. The learned APP and the learned counsel for first informant strongly opposed the present appeal by contending that the provision of section 18-A(2) of the Act which came into force with effect from 20.8.2018 has created a clear bar to the proceeding under section 438 of Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.' for short) and

this Court has also no jurisdiction to grant relief by allowing the appeal. The learned APP submitted that in view of the aforesaid provision, the decisions, if any, given in the past to hold that the application under section 438 of Cr.P.C. is tenable, cannot be used after 20.8.2018. In view of the nature of contentions raised, the scheme of the Act and the relevant provisions of Constitution of India, this Court is considering, whether the High Court or the Sessions Court (Special Court) cannot entertain the application filed under section 438 of Cr.P.C. even to ascertain as to whether the crime under the Act is committed or not and whether the Court should go with the presumption that there is material to make out prima facie case for offences mentioned in the Act when the crime is registered for offences punishable under the Act.

9) For considering the effect of the amendment which came into force with effect from 20.8.2018 and which added the provision of section 18-A in the Act, it is necessary to consider the objects behind the main Act of 1989, the objects behind amendment of 2016 and the objects behind the amendment of 2018.

10) The sum and substance of the objects and reasons clause of the main Act of 1989 show that the Act is made to protect the persons of scheduled castes, scheduled tribes from the practices

of untouchability, to protect their right to get minimum statutory wages, to protect them from bonded or forced labour, to prevent others who try to cow down the people of schedule castes and schedule tribes and terrorise them etc. The objects and reasons clause also show that to achieve the object, the provisions are made in the Act which provide for higher punishment if the offence is committed against the people of scheduled castes and scheduled tribes.

11) The objects and reasons clause of amendment of 2016 shows that to expedite the trial of the case, to have speedy investigation and to provide for removal of obstructions which were noticed at the time of arrest of the offenders under the Act and also to remove the obstacles which were noticed in the process of filing chargesheet and also to tackle the low conviction rate, the amendment was made. The amendment also provided for relief to and rehabilitation of victims of such offences. Some presumptions were raised to see that the conviction rate is increased. Section 18 of the Act was there right from beginning.

12) The amendment of 2018 has also statement of objects and reasons. The statement of objects and reasons show that the amendment was made to make it clear that the previous enquiry is

not necessary for registration of the crime in such cases and there is no need of prior approval before making arrest of the offenders under the Act. The case of the Apex Court which made it necessary for the legislature to make amendment is the case reported as **(2018) 6 SCC 454 [Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra and Ors.]**. In this case, the Apex Court had given directions to see that some preliminary enquiry is made prior to registration of the crime and the period for the same was fixed. The object behind the preliminary enquiry was stated as to avoid frivolous or motivated registration of the crimes. Further, direction was given to see that if the offender was not public servant, permission is obtained from Senior Superintendent of Police of District and the permission is obtained from appointing authority when the offender involved is a public servant before the arrest. The Apex Court had also observed that there is no absolute bar in respect of the applications of anticipatory bail filed under the Atrocity Act if prima facie case is made out or where on judicial scrutiny, the complaint is found to be prima facie malafide. For giving such direction, the provisions of Article 14 and 21 of the Constitution of India were referred and section 18 of the Act was interpreted. This was the decision of two Hon'ble Judges of the Apex Court. The previous section creating bar was section 18 of the Act and it runs as under :-

"Section 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) By way of amendment of the year 2018 following provision was inserted :-

"18-A. No enquiry or approval required.- (1) For the purposes of this Act :-

(a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or

(b) the Investigating Officer shall not require approval for the arrest, if necessary, of any person,

against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply;

(2) The provisions of Section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or direction of any Court."

The learned APP submitted that when in section 18 and section 18-A (2) of the Act, it is provided that the provision of section 438 of Cr.P.C. shall not apply in relation to the offences committed under the Act, irrespective of any judgment, order or direction of any Court, no power is left with the Sessions Court (Special Court) or the High Court to consider the matter even to ascertain as to whether there is material to make out prima facie case for the offence committed under the Act. He submitted that in criminal law, the interpretation should be strict in accordance with the object behind the law and further, the interpretation needs to be only literal interpretation and no other rule for interpretation can be invoked. He placed reliance on the cases of Apex Court on this point. He further submitted that even objects and reasons clause of the main Act cannot be referred when there is such amendment and on that point, he referred a case of Apex Court.

14) This Court has already quoted the sum and substance of the statement of objects and reasons of the original Act, of the amended Act of 2016 and of the amended Act of 2018. The reason behind the amendment of 2018 is given which is quoted already. The main object of the Act remained the same and in the past also, there was provision of section 18 which is not much different from the provision of section 18-A (2) of the Act. In the case of **Dr. Subhash**

cited supra, some directions were given by the Apex Court and those directions had diluted the powers of the investigating agency to arrest the offenders who had committed the offences under the Act and there was some restriction in the duty of the police to register the crime when the report in respect of cognizable offence is received which must be registered as per the settled law if the police officer forms an opinion that such offence has been committed. It needs to be kept in mind that the provision of section 18 of the Act was kept intact and provision of section 18-A(2) was added which can be said as supplementary provision to main section 18. In view of the situation created by the case of **Dr. Subhash** cited supra, the entire provision of section 18-A was inserted by legislature and so, it can be said that the main purpose of the legislature was to say that there was no necessity of any enquiry before registration of the crime and there was no necessity of taking approval before making arrest of the offender if the offence is committed under the Act. Apparently, there was no other reason for the amendment of the year 2018. That is the only interpretation which is possible in respect of non-obstanete clause added in section 18-A(2) "Notwithstanding any judgment and order or direction of any Court bar, shall apply".

15) Even if the proposition made by the learned APP that due to nature of aforesaid amendment viz. Section 18-A(2) of the Act,

the decision, if any, of the Apex Court rendered in the past including the decision of **Dr. Subhash** cited supra and the decisions of the High Courts given in the past [to the effect that the matter filed under section 438 of Cr.P.C. can be entertained, to ascertain as to whether there is material to make out prima facie case] are nullified, is accepted, it cannot be ignored that the higher judiciary has the power to interpret the new provisions also to ascertain the object behind the new provision. This is in addition to the power to ascertain the Constitutional validity of such newly added provision.

16) The learned counsel for appellant placed reliance on some cases decided by higher judiciary and they are as under :-

(i) **C.R.M. 10431/2018 [Pradipta Biswas Vs. State of West Bengal] dated 26.2.2019 decided by Calcutta High Court.**

(ii) **Cr.A.No. 7295/2018 [Atendra Singh Rawat Vs. State of Madhya Pradesh] dated 11.10.2018 decided by Madhya Pradesh High Court.**

(iii) **(1996) 11 SCC 428 [K. Sankaran Nair (Dead) through L.Rs. Vs. Devaki Amma Malathy Amma and Ors.].**

In the decision given by the learned Single Judge of this Court in **Criminal Appeal No. 787/2018 (Kiran s/o. Madhukar Ingle Vs. The State of Maharashtra and Anr.)** decided on 26.2.2019, the learned Single Judge has referred the case reported as **2012 Cri.L.J.**

4520 [Vilas Pandurang Pawar and Anr. Vs. State of Maharashtra] of Supreme Court and the cases of other High Courts including the case of Full Bench of Rajasthan High Court reported as **2000 Cri.L.J. 2899 [Virendra Singh Vs. State of Rajasthan]**. There are observations of Full Bench with regard to the interpretation of provision of section 18 of the Act and they are as under :-

“(18). In the matter of State of M.P. v. R.K. Balothia (supra), although the consideration was only in regard to the challenge to the constitutional validity of the Act of 1989 and Sec. 18 of the said Act in particular while dealing with the same, the arguments which have been advanced by some of the counsel in this reference regarding extent of the scrutiny of material and maintainability of the application also impliedly under consideration and although the Apex Court expressly did not enter into the question as to what extent the Courts would enter into scrutiny of material, the tone and tenor of the entire judgment is more than a pointer to the inference that once a person is accused of an offence under Sec. 3 of the Act of 1989, his remedy seeking anticipatory bail is completely barred and as observed in the matter of Rakesh's case (1995 Raj Cri C 329) (supra) by the Apex Court in Cr. Appeal No. 640/96 dated 7-5-1996, the Courts would not be justified in entertaining the application for anticipatory bail

once an offence under the Act of 1989 is disclosed in the FIR. In view of the ratio of these two judgments, there is no scope left for this Full Bench to enter into the question regarding the extent and scope of interpretation of Sec. 18 of the Act of 1989 on the ground of curtailment of personal liberty for once a person is accused of an offence and a case is registered against him under the Act of 1989, the Court of Session and the High Court in view of the clear bar of Sec. 18 of the Act of 1989 would clearly be precluded from entering into the enquiry of the allegations levelled against the accused and we find substance in the contention that if the Courts are permitted to enter into a roving enquiry in regard to the allegations, the whole purpose and effect of the section would be totally defused and would make it totally otiose and redundant. This is also the ratio which is clearly reflected from the case of State of M.P. v. R.K. Balothia (1995 Cri L J 2076) referred to hereinbefore as in the said case, the same set of arguments were advanced that if the courts are precluded from entering into the enquiry into the allegations there would be complete negation of the right to liberty envisaged in the Constitution. We are afraid that if an interpretation of Sec. 18 is made in a manner so as to permit scrutiny of materials into the case diary, charge-sheet, statements of the witnesses and other materials on record, it would be difficult to make a

distinction between usual application for anticipatory bail and the one filed in a case alleged against an accused under the Act of 1989. It has to be borne in mind that if a person is even alleged of accusation of committing an offence under the S.C. S.T. Act of 1989 the intention of Section 18 is clearly to debar him from seeking the remedy of anticipatory bail and it is only in the circumstances where there is absolutely no material to infer as to why Sec. 3 has been applied to implicate a person for an offence under the Act of 1989 the Courts would be justified in a very limited sphere to examine whether the application can be rejected on the ground of its maintainability. What is intended to be emphasized is that while dealing with an application for anticipatory bail, the Courts would be justified in merely examining as to whether there is at all an accusation against a person for registering a case under Sec. 3 of the Act of 1989 and once the ingredients of the offence are available in the FIR or the complaint, the Courts would not be justified in entering into a further inquiry by summoning the case diary or any other material as to whether the allegations are true or false or whether there is any preponderance of probability of commission of such an offence. Such an exercise in our view is intended to put to a complete bar against entertainment of application of anticipatory bail which is unambiguously laid down under Sec. 18 of

the Act of 1989, which is apparent from the perusal of the section itself and thus the Court at the most would be required to evaluate the FIR itself with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of the ingredients constituting the alleged offence. In our opinion, the Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint by calling for the case diary, charge sheet or any other material gathered at the time of investigation but if the allegations in the FIR or the complaint even if they are taken at their face value are accepted in their entirety do not constitute the offence alleged, it is only in those miniscule number of cases, the Courts would be justified in entertaining the application, not because it is maintainable but clearly because the Act would be inapplicable in the facts and circumstances of that particular case. Thus the application for anticipatory bail can be entertained only on the ground of inapplicability of the Act of 1989 due to the facts of the case which will have to be gathered only from the FIR and not beyond that because once it is gathered from the FIR that the applicant is an accused of committing an offence laid down under Sec. 3 of the Act of 1989, the bar of Sec. 18 would instantly operate against the person who has been made an accused of the

offence under the Act of 1989. To put it differently, once it is apparent from the FIR that an offence under the Act of 1989 is even alleged, the Courts would not be justified at all in weighing or scrutinising the preponderance of the probability of commission of the offence by the accused, but if from the FIR itself the ingredients of offence as laid down under Sec. 3 of the Act itself is found to be missing, the bar created by Sec. 18 would not be allowed to operate against an accused and only in that event his application for anticipatory bail would be dealt with by the concerned Court to determine whether the Act of 1989 can be said to be rightly applicable against the accused and not to enter into further enquiry into the matter so as to determine whether the allegations levelled against the accused in the FIR are true or false and there would be no justification to enter into the matter further in order to examine whether the allegations levelled against the accused are even prima facie correct or incorrect. Any other interpretation, in our opinion, would go against the letter and spirit of the clear provision of Sec. 18 of the Act of 1989 which has already stood the test of reasonableness and constitutional validity upto the level of the Apex Court.”

In the case of **Vilas Pawar** referred by the learned Single Judge and now in the case of **Dr. Subhash** cited supra, it is made clear that if

there is no material to make out prima facie case in respect of the offence committed under the Act, the provision of section 438 of Cr.P.C. can be used. The learned Single Judge considered the case decided subsequent to the amendment by Kolkatta High Court and Madhya Pradesh High Court also.

17) The learned Single Judge held that application under section 438 needs to be considered for ascertaining whether there is material to make out prima facie case for offence punishable under the Act. In the case of Supreme Court cited by the learned counsel for appellant which is reported as **1996 (11) SCC 428 [K. Sankaran Nair (Dead) through L.Rs. Vs. Devaki Amma Malathy Amma and Ors.]**, the Apex Court has laid down that only due to circumstance that the law was subsequently amended which had intention to declare that the judgment already rendered is not in consonance with the law or amended law, is not binding, it cannot be said that previous decision of higher judiciary was not binding and for that, it is necessary for legislature to remove substratum of judgment or giving retrospective effect to the amendment to displace the binding nature of the judgment. If that is not done, the judgment would operate as res-judicata. This case was in respect of the tenancy and land laws. But, on the same line it can be said that in the present case, the amendment of 2018 can be used only to the

extent of the situation which was created by **Dr. Subhash's** case cited supra. The situation was in respect of registration of the crime and the power of police to arrest the offender who has committed the offence under the Act. The amendment does not show that inherent jurisdiction of the Court to ascertain as to whether a particular case falls under the Special Enactment or not is also taken away. That could not have been done by the legislature.

18) The learned counsel for appellant produced on record copy of interim order made by the Apex Court in Petition(s) for Special Leave to Appeal (Cri) No. 7338/2018 arising out of final judgment and order made by this Court in Criminal Appeal No. 356/2018 dated 356/2018 (Saliquddin s/o. Ziyauddin Chisty Vs. The State of Maharashtra). Copy of final order made in that case is also produced. This record shows that interim order was made in favour of appellant by the Apex Court and it was confirmed on 19.2.2019. The entire text of the final order is not available. This Court called the record of Criminal Appeal No. 356/2018 and it shows that the matter was decided on 6.8.2018 by the learned Single Judge of this Court and the incident had taken place on 5.4.2018. The provision of section 18-A came to be introduced on 20.8.2018 and so, the bar of provision of section 18 was only considered by the learned Single Judge. However, it can be said that in view of the facts of the matter,

the Apex Court held that the accused Saliquddin was entitled to relief of anticipatory bail.

19) The learned APP placed reliance on some reported cases like **(1994) 3 SCC 569 [Kartar Singh Vs. State of Punjab]**. In the said case, five Judge Bench of the Apex Court had held that the deletion of section 438 from Cr.P.C. by the State was not unconstitutional. However, it appears that the point was referred to the larger bench by two Judge Bench of Supreme Court in the case reported as **(1998) 8 SCC 632 [Jagat Prasad Vs. State of U.P.]**. In the case reported as **AIR 1995 SC 1198 [State of M.P. & Anr. Vs. Ram Kishna Balothia]**, the Apex Court held that section 18 of the Act is valid. It is observed that the provision aims to protect the persons who are victims of the offences and the provision is there to take care of the possibility that the persons involved as offenders may terrorise the victims and may prevent proper investigation, if the relief of anticipatory bail is granted to them. This Court is not entering into the validity of the provision of section 18 of 18-A of the Act. For the present purpose, this Court is going with the presumption that the legislature has power to make provision like section 18 or 18-A in the Act of present nature. This Court is attempting only to address the point as to whether the inherent jurisdiction of the Court to consider as to whether the matter falls

under the special legislation is taken away by the provision like section 18 or 18-A of the Act.

20) In the landmark case reported as **AIR 2007 SC 1450 [D.K. Ganesh Babu Vs. P.T. Manokaran & Ors.]**, the Apex Court has discussed the provision of section 438 and it is laid down that in exceptional circumstances anticipatory bail can be granted. In section 438 of Cr.P.C., the factors which are required to be taken into consideration by the Court are given and the provision is as follows :-

"438. Direction for grant of bail to person apprehending arrest .-

(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail, and that Court may, after taking into consideration, *inter alia*, the following factors:- (i) the nature and gravity or seriousness of the accusation as apprehended by the applicant;

(ii) the antecedents of the applicant including the fact as to whether he has, on conviction by a Court previously undergone imprisonment for a term in respect of any

cognizable offence;

(iii) the likely object of the accusation to humiliate or malign the reputation of the applicant by having him so arrested, and

(iv) the possibility of the applicant, if granted anticipatory bail, fleeing from justice,”

either reject the application forth with or issue an interim order for the grant of anticipatory bail:”

With effect from 21.4.2018 sub-section (4) was added to section 438 and it runs as under :-

“(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA of section 376DB of the Indian Penal Code.”

In the case reported as **(1980) 2 SCC 565 [Shri. Gurbaksh Singh Sibbia and Ors. Vs. State of Punjab]**, the Constitutional Bench of Apex Court has made following observations at para No. 31 :-

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a

direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in *The State v. Captain Jagjit Singh*, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of

paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

Thus, the provision of section 438 of Cr.P.C. and the law developed on it shows that it is a discretionary relief, it can be granted in exceptional circumstances and the Court is expected to keep in mind the interest of the society also. If there are provisions due to which the relief of anticipatory bail cannot be granted to a person against whom there is allegation of commission of a particular offence, it becomes the duty of the Court to ascertain as to whether there is material to make out prima facie case of commission of that offence by the person who has come to the Court for relief of anticipatory bail. If the Court forms opinion that there is such material, then it can be said that the bar given by section 18 or section 18-A comes into play. If the material is not sufficient to make out prima facie case of commission of the offence punishable under the Act against the applicant, the Court is expected to consider the matter as

provided under section 438 of Cr.P.C. Section 438 already quoted shows that the provision is made to see that the liberty of the subject is not put in jeopardy on frivolous grounds at the instance of unscrupulous or irresponsible persons or officers who may some times be in charge of prosecution. **[Reliance placed on the case reported as AIR 1977 SC 366 (Balchand Jain Vs. State of Madhya Pradesh) and also on AIR 2007 SC 1450 [D.K. Ganesh Babu Vs. P.T. Manokaran & Ors.]**).

21) In view of the discussion made above, this Court holds that even after the amendment made in the year 2018 by which the provision of section 18-A came to be added, there is the power to Sessions Court and High Court to consider anticipatory bail application even if the crime is registered for offences punishable under the Act. At the time of consideration of such application, the Court will have to consider as to whether there is accusation of having committed the offence under the Act and as to whether there is material to make out prima facie case for commission of such offence. This Court wants to add that even the police officer is expected to give thought at the time of registration of the crime under section 154 of Cr.P.C. that whether the allegations constitute the offence under the Act. Only because the first informant belongs to scheduled tribe or scheduled caste, the crime cannot be

registered for offence punishable under the Act and offence can be registered under the Act only if there are ingredients of the offences punishable under the Act in the accusation.

22) In the present matter, this Court has already quoted the relevant material. As the crime is now shown to be registered under the provisions of sections 3 (1)(r) and 3 (1)(s), the ingredients of these two offences need to be considered. The provisions are as under :-

"3. Punishments for offences of atrocities.-

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

(a)

(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)

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

23) In section 3 (1)(r) of the Act, there is a mention of

intentional insult or intimidation with intent to humiliate. The allegations made by the first informant in respect of both the incidents even in supplementary statement do not show that there was apparently intentional insult or intimidation with intent to humiliate. It is not the allegation of the first informant that abuses were given to him by taking the name of his caste by the appellant as provided in section 3 (1)(s) of the Act. The first informant was working as Senior Police Inspector and so, in ordinary course, he would not have missed to make mention about the intentional insult or intimidation to humiliate. Further, he was working for Caste Scrutiny Committee and so, it can be presumed that he had knowledge about the rights given to the persons of scheduled tribe under the Act. Allegations as they are show that the first informant was friend of uncle of the appellant and he could have acted as a mediator. Thus, the circumstance that he was belonging to particular tribe was not apparently in the mind of the appellant as he was requesting the first informant to act as a mediator in the family dispute of Maratha caste. The nature of allegations that attempt on the life of first informant was made which are quoted above show that the incidents prima facie do not appear to be probable in nature. Thus, there is no material even to make out the offence punishable under section 307 of I.P.C.

24) For aforesaid reasons, this Court holds that application filed for anticipatory bail was maintainable and for the reasons already given, the appellant is entitled to get the relief under section 438 of Cr.P.C. In the result, the appeal is allowed. The order made by the learned Judge of the Special Court in anticipatory bail application filed by the appellant bearing Cri. Bail Application No. 80/2019 is set aside. The said application is allowed. In case of arrest of the appellant in C.R. No. 14/2019 registered at Chakur Police Station, District Latur for the aforesaid offences, he is to be released on bail on his furnishing PR and SB of Rs.15,000/-(Rupees fifteen thousand). He is not to tamper with the prosecution witnesses. He is not to commit similar offence. He is to attend the office of Investigating Officer for coming three consecutive Sundays between 9.30 a.m. and 12.00 p.m. He is to cooperate the investigating agency. Fees of the learned counsel appointed for first informant/respondent No. 2 is quantified as Rs.5000/-. It is to be paid through High Court Legal Services Authority.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]

ssc/