

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

29.01.2025.
15/tkm

C.R.M. (A) 19 of 2025

In Re : An application for anticipatory bail under section 482 of the BNSS 2023 in connection with Pradhan Nagar P.S case no. 23 of 2025 dated 11.1.2025 under sections 3(1)(iv)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act

And

In Re : Sk. Janmohammed ...petitioner

Mr. Avrojoyti Das
Mr. A Mittal
Mr. Radjeep Das
Ms. Disha Dey

...for the Petitioner

Mr. A S Chakraborty, ld APP
Mr. Aniruddha Biswas

...for the State

Mr. Hillol Saha Poddar
Mr. Sandip Guha

...for the de facto complainant

1. Petitioner is an employee of Jain Group Projects Pvt. Ltd, a development company. He contends that the company had filed a suit against the de facto complainant and had obtained an order of injunction in respect of the suit property. In retaliation the de facto complainant filed a suit against the company. In the suit there is no allegation that the company and/or its employees had dispossessed the de facto complainant or constructed any gate thereon. Ingredients of offences under section 3(1)(i)(iv)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act of 1989) are not disclosed.

2. In opposition, learned lawyer for the State as well as de facto complainant contend that the de facto complainant is a member of the scheduled caste community. Petitioner and others had illegally trespassed on their land and had constructed a gate. As a result, they are dispossessed. This compelled de facto complainant to lodge FIR.
3. We have considered the materials on record. FIR has been registered under section 31(1)(iv)(v) of Act of 1989. Section 18/18A of the Act of 1989 bars a prayer for anticipatory bail in such cases. In *Shajan Skaria Vs. State of Kerala*¹ the Apex Court clarified that the bar ought not to be mechanically applied. The court is entitled to look into the allegations in the FIR and materials collected during investigation to come to a finding whether a prima facie case is disclosed. Undoubtedly, satisfaction of existence of prima facie case would be based on the uncontroverted allegations in the FIR. Allegations of mala fide would not justify entertaining an application for pre-arrest bail.
4. We have also examined the allegations in the FIR from the aforesaid legal prism. In the FIR it is unequivocally stated that the petitioner and others had illegally trespassed into the de facto complainant's land and erected a gate hindering their egress ad ingress to the land.

¹ 2024 SCC OnLine Sc 2249

5. Learned counsel challenges the credibility of the said allegation on the score that illegal erection of the gate hindering egress and ingress to de facto complainant's land is not pleaded in the prior civil suit. From the averments in paragraphs 14 and 15 of the plaint it is clear the de facto complainant alleged interference and disturbance to possession as well as ingress and egress on the land in the suit. It cannot be said that there is no averments in the plaint with regard to the foundational facts which are alleged in the FIR.
6. We have also satisfied ourselves on the strength of evidence collected during investigation i.e. videography of the spot which shows illegal construction made on the de facto complainant's land.
7. In light of the aforesaid incriminating materials prima facie disclosing offences under the Act of 1989 we are of the opinion application for anticipatory bail is not maintainable and the same is accordingly dismissed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)