



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRI. WRIT PETITION NO.1481 OF 2022

Sanadhan s/o Waman Dhanurdhar
Age: 38 years, Occu.: Farmer,
R/o. Nipane, Taluka Pachora,
District Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra
Through the Secretary to the
Government of Maharashtra in
Home Department, Mantralaya,
Fort, Mumbai.
2. The Superintendent of Police,
Police Superintendent Office,
Jalgaon.
- 3.. The Dy. Superintendent of Police,
Pachora Divisional Police Officer Office,
Taluka Pachora, District Jalgaon.
4. Ravsaheb @ Manohar Girdhar Patil
Age: 58 years, Occu.: Agriculturist,
5. Roshan Dhanraj Patil
Age: 44 years, Occu.: Agriculturist,
6. Rajendra Vishram Patil
Age: 46 years, Occu.; Agriculturist,
7. Trambak Hilal Patil
Age: 56 years, Occu.: Agriculturist,
8. Mayur Rajendra Patil
Age: 27 years, Occu.: Agriculturist,
9. Gokul Suresh Patil
Age: 26 years, Occu.: Agriculturist,
10. Nilesh Nathu Patil
Age: 35 years, Occu.: Agriculturist,

11. Shantaram Rajdhar Patil
Age: 50 years, Occu.: Agriculturist,
12. Bhaiya @ Samadhan Balu Patil
Age: 36 years, Occu.: Agriculturist,
13. Ajabrao Dnyaneshwar Patil
Age: 27 years, Occu.: Agriculturist,
14. Vaibhav s/o Rajendra Patil
Age: 25 years, Occu.: Agriculturist,

All are R/o. At Post Nipane
Taluka Pachora, District Jalgaon.

15. Union of India
Room No.433, 'A' Wing,
Shastri Bhavan, New Delhi,
Through Secretary,
Law and Justice.

.. Respondents

...
Mr. Shriram M. Kamble, Advocate for the petitioner.
Mr. G. A. Kulkarni, APP for respondent Nos.1 to 3/State.
Mr. Vijay B. Patil, Advocate for respondent Nos.4 to 14.
...

**CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.**

**RESERVED ON : 20 SEPTEMBER 2025
PRONOUNCED ON : 18 NOVEMBER 2025**

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present petition has been filed for following reliefs :-

“B. It be held and declared that the provisions of Section 41-A of Cr.P.C. are not made applicable to the Crime registered under the prevention of Atrocity (S.C. and S.T.) Act.

C. To strike down the serving the notice under Section 41-A of the Cr.P.C. to the extent, it is not made applicable to the Crime registered under the prevention of Atrocity (S.C. and S.T.) Act.”

2. Heard learned Advocate Mr. Shriram M. Kamble for the petitioner, learned APP Mr. G. A. Kulkarni for respondent Nos.1 to 3/State and learned Advocate Mr. Vijay B. Patil for respondent Nos.4 to 14.

3. The petitioner is the original informant, who had lodged FIR vide Crime No.422 of 2022 dated 14.09.2022 with Pachora Police Station, District Jalgaon for the offences punishable under Sections 143, 147, 297, 323, 504, 506 of Indian Penal Code, under Sections 3(1)(r), 3(1)(s), 3(1)(v), 3(1)(z), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It was lodged against respondent Nos.4 to 14. After giving the story in the FIR, the petitioner submits that respondent No.3/the investigating officer had not arrested the accused persons, but gave notice. It was then stated that as per Section 41-A of the Code of Criminal Procedure and the guidelines issued by the Hon'ble Supreme Court in **Arnesh Kumar vs. State of Bihar and another**, [(2014) 8 SCC 273], the arrest has not been made, however, the arrest should have been an exception. Those accused persons had approached Hon'ble Special Judge under the Atrocities Act at Jalgaon by filing Anticipatory Bail Application No.862 of 2022. Thereafter also, the present petitioner had made a complaint with respondent No.3 that accused persons had gone to home on 20.09.2022 and threatened him to kill if he fails to

withdraw the FIR. The petitioner had filed affidavit of himself as well as the affidavit of eye witness before the learned Special Judge and opposed the Anticipatory Bail Application filed by respondent Nos.4 to 14, however, it was not considered. As per the learned Advocate for the petitioner, the decision in **Arnesh Kumar (Supra)** has been wrongly applied, when there is specific enactment i.e. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short hereinafter referred to as the “Atrocities Act”). During the pendency and hearing of the Anticipatory Bail Application, the investigating officer without following the due procedure filed charge-sheet before the learned Special Judge on 01.10.2022 bearing Special Case No.313 of 2022. The present petitioner has then made a complaint application before the learned Special Judge, as to how the procedure has not been followed. The Anticipatory Bail Applications came to be withdrawn and then accused persons had filed Regular Bail Applications under Section 439 of the Code of Criminal Procedure contending that those accused persons have surrendered themselves before the learned Special Judge. The learned Advocate for the petitioner submits that the Atrocities Act being the special enactment would prevail over the special enactment. He submit that Section 18-A of the Atrocities Act specifically prohibit filing of Anticipatory Bail Application under Section 438 of the Code of Criminal

Procedure and for that purpose, he relies on the decision in **Prathvi Raj Chauhan vs. Union of India and others**, [(2020) 4 SCC 727]. He also submits that Article 17 of the Constitution of India expressly deals with abolition of untouchability and its practice in any form and, therefore, when there is a special enactment enacted to support the fundamental rights, then the general enactment or general provisions of law will not be then applicable.

4. Per contra, the learned APP and learned Advocate for respondent Nos.4 to 14 submit that in between the general provisions of law and special provisions of law, certainly, the special provisions would prevail, however, it would be in case of any inconsistency or specific provision. If the special enactment is not making any special provision, then the general law would prevail. There is no specific provision for arrest in Atrocities Act and, therefore, Section 41, 41-A of the Code of Criminal Procedure are applicable. When there is specific guidelines, those have been issued for the procedure to be undertaken under Section 41-A of the Code of Criminal Procedure in **Arnesh Kumar (Supra)** or **Satender Kumar Antil Vs. Central Bureau of Investigation and another**, (2022) 10 SCC 51, then those pronouncements would prevail and the Special Judge as well as the investigating officers are bound to follow the same.

5. It is to be noted that the Atrocities Act came into existence on 11.09.1989 and the purpose behind the enactment was to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes and to provide for Special Courts and exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters enacted therewith or incidental thereto. There were amendments to the said enactment. Amendment Act 01 of 2016 came into effect on 26.01.2016 and if we see the preamble of the amendment, then certain forms of atrocities known to be occurring in recent years were not covered by the Act. Several offences under the Indian Penal Code other than those already covered under Section 3(2)(v) of the Atrocities Act were also committed frequently against the members of Atrocities Act on the ground that the victims were the members of Scheduled Castes and Scheduled Tribes and, therefore, it became necessary to make a comprehensive review of the relevant provisions of the Act, which was with due consultation with the State Governments, Union Territory Administrations, concerned Central Ministers, National Commission for the Scheduled Castes, National Commission for the Scheduled Tribes and certain Non-Governmental Organisations and Activists. We may take note of the history that prior to the enactment of 1989 Act, there was Act the

Protection of Civil Rights Act, 1955, for which the rules were also then framed and the rules those are now governing for that enactment are of 1977. Even as regards the Atrocities Act is concerned, the rules came to be framed in 1995. Thereafter, there are National Commission for the Scheduled Tribe (Specification of other Functions) Rules, 2005, Rules of Procedure of the National Commission for Scheduled Castes, Rules of Procedure of the National Commission for Scheduled Tribes, 2021. Thus, it can be noted that several enactments as well as amendment came to be made from time to time in the Act. However, there is no specific provision for arrest.

6. We will have to consider Section 20 of the Atrocities Act, which reads thus :-

“20. Act to override other laws.- Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custody or usage or any instrument having effect by virtue of any such law.”

Meaning thereby only the inconsistent provisions would override and not otherwise of the special enactment. The interpretation that is not in dispute is that when there is special enactment, then it would prevail

over the general enactment, but there should be then the specific enactment to the same. We would like to rely upon the observations of the Hon'ble Supreme Court in **Commercial Tax Officer, Rajasthan Vs. Binani Cements Ltd. And another**, [(2014) 8 SCC 319]. Though the case was under different enactment and the facts were different, it has been observed that "...applying this rule of construction that in cases of conflict between a specific provision and a general provision, the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision..." The learned Advocate for the petitioner relies on Section 18 and 18-A of the Atrocities Act. Section 18 of the Atrocities Act specifically provides that 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 and then Section 18A provides that no inquiry or approval is required. Here, it is to be noted that as regards the factual aspects involved in the matter are concerned, those aspects cannot be gone into in this petition, as any order that would have been passed either under the application that was made under Section 438 or Section 439 of the Code of Criminal Procedure would have been then subject to the appeal in view of Section 14-A of the Atrocities Act. Section 14-A of the Atrocities Act provides for appeal which is against the

provisions which starts with non obstante clause i.e. notwithstanding anything contained in Code of Criminal Procedure an appeal shall lie. Therefore, wherever the legislature found that there has to be a specific provision, then a specific provision has been made in Atrocities Act, otherwise the general law under Code of Criminal Procedure and now in view of coming into force of Bharatiya Nagarik Suraksha Sanhita, 2024, those provisions would be applicable. We, therefore, hold that use of Section 41-A of the Code of Criminal Procedure in the present matter when the offences under which the FIR was lodged were not punishable with more than seven years, was justified. The prayers in respect of declaration and striking down the notice cannot be granted. We do not find any merit in the present writ petition. It deserves to be dismissed. Accordingly, the present writ petition stands dismissed.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm