

MANJU DEVI

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v.

ONKARJIT SINGH AHLUWALIA @ OMKARJEET SINGH &
OTHERS

(Criminal Appeal No.570 of 2017)

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MARCH 24, 2017

[R. K. AGRAWAL AND ASHOK BHUSHAN, JJ.]

Code of Criminal Procedure, 1973 – s.438 – Anticipatory bail granted to the respondents accused of commission of offence u/ss.323, 354 and 452 IPC and s.3(1)(xi) of SC/ST Act – Appeal by complainant – Held: s.438 of the Code is not available in respect of offences under the SC/ST Act – Offences enumerated under the SC/ST Act fall into a separate and special class – High Court committed grave error in granting anticipatory bail to respondents – Constitution of India – Art.17 – Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – s.3(1)(xi).

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Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989:

s.18 – Exclusion of s.438 Cr.P.C. in connection with offences under the SC/ST Act – Purpose of incorporating s.18 in the Act – Held: The exclusion to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail.

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s.3(1)(xi) – Distinction between s.3(1)(xi) and s.354 IPC – Penal Code, 1860 – s.354.

Allowing the appeal, the Court

HELD: 1.1. The SC/ST Act was enacted in order to prevent the commission of atrocities against members of Scheduled Castes and Scheduled Tribes and to provide for special courts for the trial of offence under the said Act as also to provide for the relief and rehabilitation of victims of such offences. It is

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A undoubtedly true that Section 438 of the Code, which is available
to an accused in respect of offences under the IPC, is not available
in respect of offences under the SC/ST Act. The offences
enumerated under the SC/ST Act fall into a separate and special
class. Article 17 of the Constitution expressly deals with abolition
of 'untouchability' and forbids its practice in any form and also
provides that enforcement of any disability arising out of
'untouchability' shall be an offence punishable in accordance with
law. The offences, therefore, which are enumerated under Section
3(1) of the SC/ST Act arise out of the practice of 'untouchability'.
The use of the word 'Harijan' 'Dhobi' etc. is often used by people
belonging to the so-called upper castes as a word of insult, abuse
and derision. Calling a person by these names is nowadays an
abusive language and is offensive. It is basically used nowadays
not to denote a caste but to intentionally insult and humiliate
someone. No community should be today insulted or looked down
upon, and nobody's feelings should be hurt. [Paras 11, 12 and 14]
[709-B-C; 711-B-C; 712-F-G]

2. Though the Constitution of India abolishes
'untouchability' but in view of the social attitudes which lead to
the commission of such offences against Scheduled Castes and
Scheduled Tribes, there is justification for an apprehension that
if the benefit of anticipatory bail is made available to the persons
who are alleged to have committed such offences, there is every
likelihood of their misusing their liberty while on anticipatory
bail to terrorise their victims and to prevent a proper
investigation. It is in this context that Section 18 has been
incorporated in the SC/ST Act. The offences which are enumerated
under Section 3 of the SC/ST Act are offences which denigrate
members of Scheduled Castes and Scheduled Tribes in the eyes
of society and prevent them from leading a life of dignity and self-
respect. Such offences are committed to humiliate and subjugate
members of Scheduled Castes and Scheduled Tribes with a view
to keeping them in a state of servitude. These offences constitute
a separate class and cannot be compared with offences under the
Penal Code. [Para 15] [712-H; 713-A-C]

3.1 It is clear that Magistrate carefully perused the
complaint as well as the statement of the complainant and arrived
at a conclusion that a *prima facie* case is made against the

respondents which was upheld in revision before the Sessions Court and even in the High Court. The plea that the complaint filed by the complainant is false and malicious and to wreck vengeance by the brother of the respondent No. 1 cannot be looked into at the stage of taking cognizance and issue of process and the *mala fide* or *bona fide* of a case can only be taken into consideration at the time of trial. [Para 19] [714-F-G]

3.2 A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight. In the instant case, after careful consideration of the materials on record, the trial court and the High Court have found that a *prima facie* case for taking cognizance against the respondents is made out. Section 3(1)(xi) of the SC/ST Act which deals with assaults or use of force to any woman belonging to a Scheduled Caste or Scheduled Tribe with the intent to dishonour or outrage her modesty is an aggravated form of the offence. The only difference between Section 3(1)(xi) and Section 354 is essentially the caste or the tribe to which the victim belongs. If she belongs to a Scheduled Caste or Scheduled Tribe, Section 3(1)(xi) applies. The other difference is that in Section 3(1)(xi) dishonour of such victim is also made an offence. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code and the High Court has committed grave error in granting anticipatory bail to the respondents. [Paras 20, 21] [714-H; 715-A-B]

Vilas Pandurang Pawar and Another v. State of Maharashtra and Others (2012) 8 SCC 795 : [2012] 8 SCR 270; *Bachu Das v. State of Bihar and Others* (2014) 3 SCC 471 : [2014] 2 SCR 287 – relied on.

Jai Singh and Another v. Union of India and Others AIR 1993 Raj. 177 – approved.

Nirmal Jeet Kaur v. State of M.P. and Another (2004) 7 SCC 558 : [2004] 3 Suppl. SCR 1006 – held inapplicable.

Case Law Reference

[2012] 8 SCR 270	relied on	Para 16
[2014] 2 SCR 287	relied on	Para 16

A AIR 1993 Raj. 177 approved Para 17
 [2004] 3 Suppl. SCR 1006 held inapplicable Para 18

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal
 No. 570 of 2017.

B From the Judgment and Order dated 03.12.2014 of the High
 Court of Judicature at Patna in Crl. Misc. No. 25561 of 2014.

A. Sharan, Mrs. Anjana Prakash, Sr. Advs., Sanjeev Kumar,
 H. K. Naik, Rajnish, Ajay Amrit Raj, P. S. Nerwal, Himanshu Shekhar,
 Abhinave Mukerji, Siddharth Garg, Mrs. Bihu Sharma, Ms. Purnima
 C Krishna, Sanchit, Ms. Swati, Ms. Aanchal Duta, Suman Jyoti Khaitan,
 Advs. for the appearing parties.

The Judgment of the Court was delivered by

R. K. AGRAWAL, J. 1. Leave granted.

D 2. This appeal is directed against the judgment and order dated
 03.12.2014 passed by the learned single Judge of the High Court of
 Judicature at Patna in Criminal Miscellaneous No. 25561 of 2014 whereby
 the High Court granted anticipatory bail to the respondents herein accused
 of commission of offence under Sections 323, 354 and 452 of the Indian
 Penal Code, 1860 (in short 'the IPC') and Section 3(1)(xi) of the
 E Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities)
 Act, 1989 (in short 'the SC/ST Act').

3. Brief facts:

(a) On 04.05.2009, one Manju Devi - the appellant herein-the
 complainant, filed a complaint being Complaint Case No. 1079C/09 in
 F the Court of Chief Judicial Magistrate, Begusarai under Sections 323,
 354 and 452 of 'the IPC' and Section 3(1)(xi) of 'the SC/ST Act' stating
 that on the fateful day, i.e., on 18.04.2009, at around 3:00 p.m., the
 respondents entered into her quarter and caught hold of her in order to
 outrage her modesty. When the appellant herein somehow managed to
 G come out of their clutches, the respondents abused her and her family
 members on their caste by calling them 'Harijans and Dhobis' and
 threatened with dire consequences for revealing the said incident outside.

(b) The above complaint resulted into registration of first
 information report (FIR) being No. 65/09 under Sections 323, 354 and

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452 of the IPC and Section 3(1)(xi) of the SC/ST Act in P.S. Sadar, Begusarai.

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(c) After investigation, the police filed a closure report in the same. However, the Chief Judicial Magistrate, Begusarai, being dissatisfied with the report, vide order dated 20.03.2013, took cognizance of the offence and process was issued against the respondents for commission of offence under the aforesaid Sections of the IPC as well as the SC/ST Act.

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(d) Aggrieved by the order dated 20.03.2013, the respondents preferred a Criminal Revision being No. 310/2013 before the Additional Sessions Judge, Begusarai. Learned Additional Sessions Judge, Begusarai, vide order dated 14.12.2013, affirmed the order dated 20.03.2013 passed by the Chief Judicial Magistrate, Begusarai.

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(e) The respondents preferred Criminal Miscellaneous No. 12468 of 2014 before the High Court against the order dated 14.12.2013. Learned single Judge of the High Court, vide order dated 25.03.2014, confirmed the order dated 14.12.2013. The respondents further preferred a Criminal Miscellaneous being No. 25561 of 2014 for anticipatory bail. Learned single Judge of the High Court, vide order dated 03.12.2014, granted anticipatory bail to the respondents to the satisfaction of Judicial Magistrate, 1st Class, Begusarai.

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(f) Being aggrieved by the order dated 03.12.2014, the appellant herein has preferred this appeal by way of special leave before this Court.

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4. Heard Mr. Sanjeev Kumar, learned counsel for the appellant herein and Mr. A. Sharan, learned senior counsel for the respondents.

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Point for consideration:

5. The only point for consideration before this Court is whether the High Court was justified in granting anticipatory bail to the respondents in the present facts and circumstances of the case?

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Rival contentions:

6. Learned counsel for the appellant, by drawing our attention to the relevant materials, namely, the complaint, the statement of the complainant as well as the relevant provisions of the SC/ST Act submitted that the High Court was not justified in granting anticipatory bail to the

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A respondents, particularly, in the light of the factual conclusion arrived at by the learned Additional Sessions Judge, Begusarai in the order dated 14.12.2013. It was further contended from the side of the appellant that in view of the clear findings on the point, the High Court was not right in granting anticipatory bail to the respondents.

B 7. Learned senior counsel appearing for the respondents submitted that the allegations against them are false as the appellant was working as maid at the relevant time and was used to settle the scores between the respondent No. 1 and his brother owing to a long drawn dispute pending between them. Learned senior counsel further submitted that from the day, namely, 03.12.2014, when the High Court granted anticipatory bail to them, no untoward incident had occurred and the respondents had cooperated with the investigating officer. It was further argued that in the above circumstances, the High Court was right in granting anticipatory bail to the respondents and no interference sought for by this Court at this stage.

D **Discussion:**

E 8. A perusal of the complaint shows that the complainant belongs to the Scheduled Caste and was working as a maid at the relevant time. The respondents, in order to outrage the modesty of the complainant, entered into her house and caught hold of her. When the complainant resisted to their acts, the respondents forcefully pushed her on the floor and started abusing her with filthy words that “you ‘Harijan’, ‘dhoban’, you survive on our leftover and you show attitude to us. You ‘Harijan’ people attitude have gone very high and today you will be left destroyed”. It was further mentioned in the complaint that the respondents threatened her for life before leaving the place in case of disclosing about the incident to anyone.

F 9. Accordingly, cognizance was taken by the Chief Judicial Magistrate, vide order dated 20.03.2013, for the offence under various Sections of the IPC and the SC/ST Act. The Additional District and Sessions Judge, Begusarai, after finding out that there was sufficient material before the Chief Judicial Magistrate at the time of passing the order dated 20.03.2013, affirmed the same which was affirmed by the High Court, vide order dated 25.03.2014.

G 10. In this backdrop, it would be apt to quote Section 18 of the SC/ST Act which reads as under:-

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“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.”

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11. The SC/ST Act was enacted in order to prevent the commission of atrocities against members of Scheduled Castes and Scheduled Tribes and to provide for special courts for the trial of offence under the said Act as also to provide for the relief and rehabilitation of victims of such offences. ‘Atrocity’ has been defined under Section 2 of the said Act to mean an offence punishable under Section 3. Section 3(1) provides as follows:

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“3. Punishments for offences of atrocities.—(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;

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(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

(iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;

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(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

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(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

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(vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do ‘begar’ or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

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- A (vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;
- B (viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;
- (ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;
- C (x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;
- D (xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;
- (xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;
- E (xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;
- F (xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;
- G (xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence,
- H 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.”

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12. It is undoubtedly true that Section 438 of the Code, which is available to an accused in respect of offences under the IPC, is not available in respect of offences under the SC/ST Act. The offences enumerated under the SC/ST Act fall into a separate and special class. Article 17 of the Constitution expressly deals with abolition of ‘untouchability’ and forbids its practice in any form and also provides that enforcement of any disability arising out of ‘untouchability’ shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1) of the SC/ST Act arise out of the practice of ‘untouchability’. It is in this context that certain special provisions have been made in the SC/ST Act, including the impugned provision under Section 18 which is before us. The exclusion of Section 438 of the Code in connection with offences under the SC/ST Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail.

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13. In this connection, it is pertinent to refer to the Statement of Objects and Reasons appended to the SC/ST Act which is as under:-

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“Despite various measures to improve the socio-economic conditions of the Scheduled Castes and Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons..

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2. Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try

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A to preserve their self-respect or honour of their women, they
become irritants for the dominant and the mighty. Occupation
and cultivation of even the Government allotted land by the
Scheduled Castes and the Scheduled Tribes is resented and more
often these people become victims of attacks by the vested
B interests. Of late, there has been an increase in the disturbing
trend of commission of certain atrocities like making the
Scheduled Caste persons eat inedible substances like human
excreta and attacks on and mass killings of helpless Scheduled
C Castes and the Scheduled Tribes and rape of women belonging
to Scheduled Castes and the Scheduled Tribes. Under the
circumstances, the existing laws like the Protection of Civil Rights
Act, 1955 and the normal provisions of the Indian Penal Code
have been found to be inadequate to check these crimes. A
special Legislation to check and deter crimes against them
committed by non-Scheduled Castes and non-Scheduled Tribes,
D has therefore, become necessary.

3. The term 'atrocities' has not been defined so far. It is considered
necessary that not only the term 'atrocities' should be defined but
stringent measures should be introduced to provide for higher
punishments for committing such atrocities. It is also proposed
to enjoining on the States and the Union Territories to take specific
preventive and punitive measures to protect the Scheduled Castes
E and the Scheduled Tribes from being victimized and where
atrocities are committed, to provide adequate relief and assistance
to rehabilitate them."

14. In the above context, it is now easy to understand the factual
F matrix of the case. The use of the word 'Harijan' 'Dhobi' etc. is often
used by people belonging to the so-called upper castes as a word of
insult, abuse and derision. Calling a person by these names is nowadays
an abusive language and is offensive. It is basically used nowadays not
to denote a caste but to intentionally insult and humiliate someone. We,
G as a citizen of this country, should always keep one thing in our mind and
heart that no people or community should be today insulted or looked
down upon, and nobody's feelings should be hurt.

15. Though the Constitution of India abolishes 'untouchability'
but in view of the social attitudes which lead to the commission of such
H offences against Scheduled Castes and Scheduled Tribes, there is

justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the SC/ST Act. The offences which are enumerated under Section 3 of the SC/ST Act are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code.

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16. In view of the above, it would be relevant to quote a decision of this Court in *Vilas Pandurang Pawar and Another vs. State of Maharashtra and Others* (2012) 8 SCC 795 wherein this Court has held as under:-

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“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.

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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

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A cannot be easily brushed aside by elaborate discussion on the evidence.”

The principles laid down in the aforementioned case has been followed by this Court in *Bachu Das vs. State of Bihar and Others* (2014) 3 SCC 471.

B 17. A similar view of Section 18 of the SC/ST Act has been taken by the Full Bench of the Rajasthan High Court in the case of *Jai Singh and Another vs. Union of India and Others* AIR 1993 Raj. 177 wherein it was held that the SC/ST Act with which we are concerned aims at to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes. The two Acts may be different in their amplitude, but indignity tolerated up to the year 1988 by the Scheduled Castes and Scheduled Tribes had been felt not to be tolerable any more, consequently, the present Act was enacted and we respectfully agree with its findings.

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D 18. The decision relied upon by learned senior counsel for the respondents in *Nirmal Jeet Kaur vs. State of M.P. and Another* (2004) 7 SCC 558 does not help the respondents for the simple reason that in the aforesaid case it has been held that Sections 438 and 439 operate in different fields and for making an application in terms of Section 439 of the Code a person has to be in custody whereas Section 438 of the Code deals with direction for grant of bail to person apprehending arrest and contemplates merely an order directing the release of accused on bail in the event of his arrest.

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F 19. It is clear that learned Magistrate carefully perused the complaint as well as the statement of the complainant and arrived at a conclusion that a *prima facie* case is made against the respondents which was upheld in revision before the Sessions Court and even in the High Court. With regard to the plea that the complaint filed by the complainant is false and malicious and to wreck vengeance by the brother of the respondent No. 1 herein, we are of the view that it cannot be looked into at the stage of taking cognizance and issue of process and the *mala fide* or *bona fide* of a case can only be taken into consideration at the time of trial.

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H 20. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight. In the instant case, after careful consideration of the materials on record,

the trial court and the High Court have found that a *prima facie* case for taking cognizance against the respondents is made out. Section 3(1)(xi) of the SC/ST Act which deals with assaults or use of force to any woman belonging to a Scheduled Caste or Scheduled Tribe with the intent to dishonour or outrage her modesty is an aggravated form of the offence. The only difference between Section 3(1)(xi) and Section 354 is essentially the caste or the tribe to which the victim belongs. If she belongs to a Scheduled Caste or Scheduled Tribe, Section 3(1)(xi) applies. The other difference is that in Section 3(1)(xi) dishonour of such victim is also made an offence.

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21. In view of the above discussion and in the light of the specific averments in the complaint made by the complainant, we are of the considered opinion that Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code and the High Court has committed grave error in granting anticipatory bail to the respondents. Accordingly, the order dated 03.12.2014, passed by the High Court, is set aside.

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22. The appeal is allowed. The respondents are granted four weeks' time from today to surrender before the appropriate court and seek for regular bail. However, it is made clear that the present conclusion is confined only to the disposal of this petition and the trial court is free to decide the case on merits.

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