

2025:PHHC:097662



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

207

CRA S-1634-2025

Date of Decision:29.07.2025

Aditya Parashar

...Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Nikhil Ghai, Advocate, for the appellant.

Mr. Ravneet Joshi, DAG, Punjab.

Mr. Kanwar Abhay Singh, Advocate
for respondent No. 2.

N.S.SHEKHAWAT, J.

1. The present appeal has been preferred against the impugned order dated 05.05.2025 passed by the Special Court, Ludhiana, whereby, the bail application under Section 482 of the B.N.S.S., 2023 filed by the present appellant in case FIR No. 86 dated 12.04.2025 under Sections 3(1)(r) and 3(1)(s) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 (hereinafter to be referred as '**the SC and ST Act**') was ordered to be dismissed.

2. The FIR in the present case has been registered on the basis of the statement made by Rahul and the same has been reproduced below:-

“Statement of Rahul Kumar son of Radhe Shyam resident of Gali No. 07, Gopal Nagar, Ludhiana, aged about 31 years, Mob. 84278-10557. Stated that I am a resident of above said address and am Incharge of Aam Aadmi Party's office Ward No. 69. I belong to S.C category. Today i.e on 12.05.2025, I along with team of Sarabjinder Singh Bhullar was doing the verification of votes in Hero Heart Centre Road Tagore Nagar Civil Lines Ludhiana. At that time, Aditya Prashar and Sanjeev Bhalla along with about 8/10 persons reached the spot. Lokinder Dhama and Deepak Arora were also present there and on their seeing, Aditya Prashar while raising lalkaras had an altercation with us. As we have been playing cricket together since childhood, he knew about my caste since earlier. He, immediately coming there started using derogatory words against my caste and said that, "Saalya, Chuhriya, I will see you later, you get a side, let me first see other persons with me." Then we entered nearby shop out of fear. In the meantime, he called other persons also. Out of fear, I made a phone call to Bhullar Sahib that they will kill us. In the meantime, Bhullar Sahib also came to the spot and other persons also gathered there. They while not caring for Bhullar Sahib said that it is their ward and we should leave this ward and go back, otherwise they will cause harm to us. Kindly protect our life and property and keeping in view the derogatory words used against my caste, justice be imparted to me. I have got recorded my statement with you. I have heard the same, which is correct. Sd/ Rahul (8427810557)”.

3. Learned counsel for the appellant has vehemently argued that as per the allegations levelled by the complainant, the appellant had simply exhorted the other co-accused and had an altercation with the complainant party. In fact, the complainant in the present case is the Incharge of Ward No. 69 of Aam Admi Party, i.e., the Ruling Party in the State of Punjab. On 08.04.2025, several unknown persons were ringing the bells of the house and on being questioned, they stated that they had come from the Election Commission Office to check the voters list. Later on, it was discovered that they were members of the political party and there was simply an exchange of hot words between the residents of the locality and the complainant. Even, no such occurrence had taken place and no one was aware of the caste of the complainant. However, by concocting a false story, the appellant and others have been falsely involved in the present case, under the political influence of the complainant. Even, the ingredients of the offence under Sections 3(1)(r) and 3(1)(s) of the SC and ST Act are completely missing in the facts and circumstances of the present case.

4. Vide order dated 12.05.2025, the appellant was directed to surrender before the Investigating Officer and he was ordered to be released on *interim* bail. Today, during the course of hearing, learned counsel for the appellant has raised the above submissions again and submitted that on surrender, he has already been admitted to the *interim* bail by the Investigating Officer of the present case.

5. On the other hand, learned State counsel submits that the appellant had appeared before the IO in the present case and has been admitted to *interim* bail. Learned State counsel submits that the appellant is not required any further for the purpose of investigation.

6. Learned counsel appearing on behalf of the respondent/complainant submits that in view of the bar contained in Section 18 of the SC and ST Act, the present petition is not maintainable before this Court.

7. I have heard learned counsel for the parties and perused the record.

8. In the matter of ***Shajan Skaria Vs. The State of Kerala and another, 2024(3) Crimes 427***, the Hon'ble Supreme Court discussed the issue as to whether Section 18 of the SC and ST Act imposes an absolute bar on the grant of anticipatory bail in cases registered under the said Act and answer was in negative. While elaborating the said preposition of law, the Hon'ble Apex Court has held as follows:-

*“37. The applicability of section 438 of the CrPC, 1973 to cases registered under the Act, 1989 was also dealt with by a two-Judge Bench of this Court in **Vilas Pandurang Pawar and Another v. State of Maharashtra and Others reported in (2012) 8 SCC 795**. The specific issue framed and answered by this Court was whether an accused charged with various offences under the IPC along with offences under the Act, 1989*

would be entitled for an anticipatory bail under section 438 of CrPC, 1973.

38. It was observed by this Court that although Section 18 of the Act, 1989 creates a bar for invoking section 438 of the CrPC, 1973 yet the courts are entrusted with a duty to verify the averments in the complaint and to find out whether an offence under the Act, 1989 is prima facie made out or not. It was further observed that while considering the application for anticipatory bail, the scope for appreciation of evidence and other material is limited and the courts are not expected to undertake an intricate evidentiary inquiry of the materials on record. The relevant observations are reproduced hereinbelow:

"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 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. 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."

(Emphasis supplied)

39. A three-Judge Bench of this Court in **Rahna Jalal v. State of Kerala reported in (2021) 1 SCC 733** while discussing in the context of Section 7 of the Muslim Women (Protection of Rights on Marriage) Act, 2019, elaborated on the requirement of the existence of a prima facie case under Section 18 of the Act, 1989 for the bar of anticipatory bail to become applicable, as follows:

"25. Thus, even in the context of legislation, such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, where a bar is interposed by the provisions of Section 18 and Sub-section (2) of Section 18A on the application of section 438 of the CrPC, 1973 this Court has held that the bar will not apply where the complaint does not make out "a prima facie case" for the applicability of the provisions of the Act. A statutory exclusion of the right to access remedies for bail is construed strictly, for a purpose. Excluding access to bail as a remedy, impinges upon human liberty. Hence, the decision in Chauhan (supra) held that the exclusion will not be attracted where the complaint does not prima facie indicate a case attracting the applicability of the

provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989."

(Emphasis supplied)

40. This Court, in ***Hitendra Vishnu Thakur and Others v. State of Maharashtra and Others reported in (1994) 4 SCC 602***, while discussing a similarly worded provision in the Terrorist and Disruptive Activities (Prevention) Act, 1985, held as follows:

"13. We would, therefore, at this stage like to administer a word of caution to the Designated Courts regarding invoking the provisions of TADA merely because the investigating officer at some stage of the investigation chooses to add an offence under same (sic some) provisions of TADA against an accused person, more often than not while opposing grant of bail, anticipatory or otherwise. The Designated Courts should always consider carefully the material available on the record and apply their mind to see whether the provisions of TADA are even prima facie attracted."

(Emphasis supplied)

a. Significance of the expression "arrest of any person" appearing in Section 18 of the Act, 1989

41. It is clear from the aforesaid discussion that Section 18 of the Act, 1989 does not impose an absolute fetter on the power of the courts to examine whether a prima facie case attracting the provisions of the Act, 1989 is made out or not. As discussed, Section 18 stipulates that in any case which involves the arrest of any person on the accusation of having committed an offence under the Act, 1989, the benefit of anticipatory bail under section 438 of CrPC, 1973 would not be available to the

accused. We have deliberated on the significance of the expression "arrest of any person" appearing in the text of Section 18 of the Act, 1989 and are of the view that Section 18 bars the remedy of anticipatory bail only in those cases where a valid arrest of the accused person can be made as per Section 41 read with section 60A of CrPC, 1973."

9. Thus, it is apparent that in cases, where the complaints are lodged out of personal and political vendetta, the bar contained in Section 18 of the SC and ST Act (Act of 1989) would not restrict the powers of this Court under Section 438 of Code of Criminal Procedure. When on judicial scrutiny, the complaint is found to be *prima-facie malafide*, or if no *prima facie* case is made out, this Court will be well within its powers to grant the concession of anticipatory bail to the accused in such cases.

10. In the present case, it is debatable as to whether the offence under Sections 3(1)(r) and 3(1)(s) of the SC and ST Act is made out against the appellant and the prosecution is yet to lead the evidence to prove the offence against the appellant. Moreover, the appellant has also levelled allegations of registration of FIR under the political influence of the complainant and both the parties have to lead their respective evidence before the trial Court. However, at this stage, without commenting on the merits of the case, the present petition is allowed. The petitioner is granted concession of anticipatory bail, subject to the conditions as provided under Section

482(2) of the B.N.S.S., 2023. It will be open for the Investigating Officer to call the petitioner to join investigation, if so required, by issuing a written notice in this regard and he shall abide by the conditions mentioned in Section 482(2) of the B.N.S.S.

29.07.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No