

**(2021) 06 KAR CK 0055**  
**In the Karnataka High Court**  
**Case No : Criminal Appeal No. 549 Of 2021**

Lakshmi Narayana L & Others

APPELLANT

Vs

State Of Karnataka & Others

RESPONDENT

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**Date of Decision :** 14-06-2021

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 378(3), 438, 439  
Scheduled Castes And The Scheduled Tribes (?Prevention Of Atrocities) Act, 1989 —  
Section 3(1)(r), 3(1)(s), 18, 18A  
Indian Penal Code, 1860 — Section 143, 149, 323, 354, 448, 504, 506  
Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Amendment  
Act, 2015 — Section 14(A)(2)  
Constitution Of India, 1950 — Article 21

**Citation :** (2021) 06 KAR CK 0055

**Hon'ble Judges :** K. Somashekar, J

**Bench :** Single Bench

**Advocate :** Shivaraj N. Arali, Thejesh .P, Akshay .M

**Final Decision :** Dismissed

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## Judgement

K.Somashekar, J

1. This appeal is filed challenging the order passed by the Court of the I Addl. District & Sessions Judge, Ramanagara in CrI.Misc.No.98/2021 dated

10.02.2021. The application filed by the appellants / accused under Section 438 Cr.P.C. came to be dismissed holding that the petition was not

maintainable keeping in view Section 18 and Section 18A of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

2. The appellants are arraigned as accused in Cr.No.17/2021 registered by Harohalli P.S. for offences punishable under Sections 143, 323, 354, 448,

504, 506 read with Section 149 of the IPC, besides Section 3(1)(r) and Section 3(1)(s) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The appellants / accused are under apprehension of arrest by the Investigating Agency without having been committed offences as narrated in the complaint and so also in the FIR in Cr.No.17/2021. However, this appeal has been preferred by the appellants / accused under Section 14-A(2) of the SC & ST (Amendment) Act, 2015 as there is an appeal provision but concurrent jurisdiction relating to Section 438 of the Cr.P.C. is vested to the High Court and so also the District & Sessions Judge to exercise power under Section 438 of the Cr.P.C. where the present appellants arraigned as accused are in apprehension of arrest. The said Section 14-A reads thus, for the purpose of reference:

14A. Appeals.-- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment,

sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the

High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period

of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient

cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub- section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of

the appeal.

4. Whereas the learned counsel for the appellants submits that none of them had committed the alleged offences, even though the same is narrated

and recorded in the FIR for offences under the IPC and so also offences under

the SC & ST Act, 1989 in Cr.No.17/2021. Whereas in the grounds it is urged that the complainant in the aforesaid crime is a Christian by religion and gathered on the alleged date of incident which is narrated in the FIR and also in the complaint but it is highly improbable that members of other religions, that is Hindus or Muslims had gathered there. This contention is taken by the learned counsel for the appellants seeking intervention of the impugned order passed by the Trial Court in CrI.Misc.No.98/2021. However, the appeal has been preferred under the relevant provisions of the amended special enactment of the SC & ST Act, 2015. The accused are under apprehension that the Investigating Agency ought to arrest them without any reasons.

5. Appellant No.1 herein who is the sole bread- winner in the family consisting of his wife and two children and also old aged parents. Appellant No.2

who is also arraigned as an accused is aged 35 years and a permanent abode of Kaggalahalli village, Ramanagara District. Further, Appellant No.2 is

by avocation a farmer and season is approaching to cultivate the lands to eke out his livelihood. Appellant Nos.3 and 4 are aged 40 years and 36 years

respectively and are permanent abodes of Harohalli village, Ramanagara District. These grounds are urged in the appeal for seeking intervention of

the impugned order passed by the Trial Court in CrI.Misc.No.98/2021 rejecting the petition filed under Section 438 of the Cr.P.C as not maintainable.

On all these premise, learned counsel for appellants seeks to allow the appeal and to set aside the order passed by the Court of the I Addl. District &

Sessions Judge, Ramanagara in CrI.Misc.No.98/2021 and consequently grant anticipatory bail as sought for.

6. Learned HCGP for the State in this appeal, counter to the arguments advanced by the learned counsel for the appellants, contends that the

appellants / accused had absconded from the date of commission of offences and that itself indicates that there are prima facie material against the

accused for commission of offences as reflected in the FIR said to be recorded by the Harohalli P.S. in Cr.No.17/2021 dated 21.01.2021. Whereas

the provisions of the SC & ST (Amendment) Act, 2015 have been amended by insertion of the provisions of Section 18 and 18A to the said Act. In

view of the said amendment, the petition under Section 438 of the Cr.P.C. is not maintainable for seeking the relief of anticipatory bail. These are the

contentions taken by the learned HCGP for the State and on all these premise, he seeks to dismiss the appeal as being without any merit.

7. It is well-settled principle of law by rendering a catena of decisions even by Hon'ble Supreme Court of India and also by State High Courts relating

to Section 438 of the Cr.P.C. In order to exercise power in respect of a petition filed under Section 438 Cr.P.C. seeking anticipatory bail, it is only in

anticipation to arrest the accused for involvement of commission of an offence in respect of an FIR said to have been recorded by the police. But in

the instant case, the Harohalli P.S. have registered a case in Cr.No.17/2021 for offences punishable under the provisions of the Indian Penal Code,

1860 and also for offences under the SC & ST Act.

8. It is relevant to refer to Sections 18 and 18-A of the SC & ST (Amendment) Act, 2015, for the purpose of reference in this appeal:

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.

18A. 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 order or direction of any

Court.

9. Whereas in Section 18A of the SC & ST (Amendment) Act, 2015, there is an express bar to entertain a petition under Section 438 Cr.P.C.

notwithstanding anything in the Cr.P.C. and even any judgment or order or direction rendered by the court of law. When there is an express bar as

stated in Section 18A, it is not proper to exercise the power, though the discretionary power is always vested with the High Court. When the statutory

provision makes it clear about the express bar, to exercise power under Section 438 Cr.P.C. relating to grant of anticipatory bail as sought for in this

appeal, it does not arise for consideration to grant anticipatory bail. However, mere 'fear' is not a 'belief' unless well established by reasons, as held by

the Hon'ble Supreme Court in the case of GURBAKSH SINGH SIBBIA VS STATE OF PUNJAB reported in AIR 1980 SC 1632.

10. However, the personal life and liberty of an individual who is arraigned as an accused ought to be protected as enshrined in Article 21 of the

Constitution of India, when the person's life and liberty is at stake, i.e., under apprehension of arrest. Similarly, when the life of a human being who is a

citizen of the country is at stake, it is deemed proper to exercise power under inherent jurisdiction of this court as well as under Section 438 Cr.P.C.,

which is a concurrent jurisdiction of the State High Court as well as Court of the District & Sessions Judge.

11. But in the peculiar circumstances of this matter, it is deemed appropriate to state that though there is an express bar under Section 18A of the SC

& ST Amendment Act, 2015, power is to be exercised keeping in view Article 21 of the Constitution of India as well as the reliance stated supra. If

not, the personal life and liberty of appellants / accused would be at stake. In the peculiar circumstances of this matter, it is deemed proper that the

appeal deserves to be dismissed for the relief sought for when there is an express bar under Section 18A of the SC & ST (Amendment) Act, 2015.

Hence, I proceed to pass the following:

ORDER The appeal preferred by the appellants / accused under Section 14-A(2) of the SC & ST (Amendment) Act, 2015, is hereby dismissed.

Consequently, the impugned order passed by the Trial Court in Crl.Misc.No.98/2021 dated 10.02.2021 is hereby confirmed. But in the special

circumstances, it is deemed proper to state that rights of the accused shall be protected. Hence, the appellants / accused are directed to approach the

Court of the I Addl. District & Sessions Judge, Ramanagara by surrendering where the case in Cr.No.17/2021 registered by the Harohalli P.S. is

pending, by filing a Regular Bail Petition under Section 439 Cr.P.C. within a period of seven (7) days from the date of this order.

Soon after the said petition is filed by the appellants / accused, the concerned Special Court shall consider the petition on the same day, by giving an

opportunity to the Public Prosecutor if he wants to file any response to that application. But the said petition shall be decided on merits, on the same

day.

In the meanwhile, the Investigating Agency of Harohalli P.S. where the case in Cr.No.17/2021 is pending for investigation, shall not precipitate till the

disposal of the petition filed by the appellants / accused under Section 439 Cr.P.C. seeking regular bail by surrendering before the said Court in

accordance with law.

Accordingly directed the Investigating Agency. However, the Trial Court shall not be influenced by any observations made in this order, but the

petition filed by the appellants / accused shall be disposed of on merits, in accordance with law.