

(2006) 07 DEL CK 0157
In the Delhi High Court
Case No : Bail Application 249 of 2006

Sajjan Kumar

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision : 03-07-2006

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 302, 438
Penal Code, 1860 (IPC) — Section 120B, 201, 307, 325, 34
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 18, 3, 3(1), 4, 5

Citation : (2006) 132 DLT 18 : (2006) 90 DRJ 420

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : I.U. Khan, for the Appellant; Pawan Sharma and B. Pakhiddey and Vikas Pakhiddey, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—This is an application u/s 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to "as the Code") for grant of anticipatory bail. The main issue involved in this application is whether the petitioner would be entitled to invoke Section 438 of the Code in view of the provisions of Section 18 of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the SC&ST Act"). The allegation against the petitioner, inter alia, is that he used the words: "Tu Chura Hamare Khilaf Ladne Ki Himmat Karega" against the complainant, who is admittedly a member of a Scheduled Caste. Based on this allegation and other allegations, the learned Metropolitan Magistrate, Delhi passed a summoning order on 24.08.2005 against all the accused, including the petitioner for offences punishable u/s 325/34 IPC and the petitioner has been additionally summoned for the offence punishable u/s 3(1)(x) of the SC&ST Act which is non-bailable.

2. The primary argument advanced by Mr I.U. Khan, the learned Counsel

appearing on behalf of the petitioner, is that the complaint filed by the petitioner relates to an alleged incident of 11.03.2002. But, it is only at the pre-summoning stage that the complainant, who was examined as CW-1 on 28.05.2005, for the first time, made the accusation that the words mentioned above were used by the petitioner against him over three years ago on 11.03.2002. Mr Khan submitted that in the complaints and other letters/representations made by the complainant during the intervening period, there was no reference of the petitioner having uttered these words. Therefore, he contended that these words have been imputed to the petitioner belatedly as an afterthought so as to bring him within the rigours of the stringent and strict provisions of the SC&ST Act in an attempt to see that the petitioner does not get bail. Detailed submissions were made which shall be examined below.

3. On the other hand, the learned Counsel for the complainant submitted that it is not correct that the complainant had, on 28.05.2005, made the accusation with regard to the said words having been uttered by the petitioner for the first time. He submitted that a complaint dated 18.06.2002 to this effect had been lodged at Police Station Nangloi, but no action was taken by the police. It is, Therefore, his contention that the complainant had at the first opportunity informed the police of the petitioner having allegedly used the aforesaid derogatory words against the complainant. The learned Counsel for the complainant also submitted that the summoning order dated 24.08.2005 has not been challenged by the petitioner and, Therefore, the same has become final. As per the summoning order dated 24.08.2005 passed by the learned Metropolitan Magistrate, it is apparent that the learned Metropolitan Magistrate had come to a prima facie view that offences u/s 325 read with Section 34 IPC were made out against the accused Nos. 1, 2, 3 and 6 and the offence u/s 3(1)(x) of the SC&ST Act was made out against the accused No. 1 (the petitioner herein). He submitted that the learned Metropolitan Magistrate having come to this prima facie view, the provisions of the SC&ST Act immediately came into play and by virtue of Section 18 thereof, Section 438 of the Code ceased to apply and, Therefore, there is no question of entertaining the present application as it is barred at the threshold.

4. These, in brief, are the arguments advanced by the counsel for the parties. In order to appreciate the same and to discuss the same at greater length, it would be necessary to indicate the factual position in chronological order:

10.03.2002: It is alleged that at about 11.00 p.m., the petitioner directed the co-accused Harender Singh to make a phone call to the complainant. Such a phone call was allegedly made and the complainant was called to the petitioner's office in the morning of 11.03.2002.

11.03.2002: It is further alleged that when the complainant went to the petitioner's office, the complainant was asked to withdraw from the election to the MCD in which co-accused Harender Singh was intending to be in the fray. The complainant refused to withdraw from the election. Upon this, it is alleged that

on the asking of the petitioner, the co-accused [Bijender Singh and Harender Singh] kicked and boxed the complainant and the co-accused Mandeep gave several iron fist blows to the complainant due to which the complainant received multiple injuries and suffered mental disorder. It is also alleged that the accused threatened the complainant that they would get him killed and it would be treated only as a road accident and the file would be closed.

12.03.2002: The complainant was admitted to the Lady Hardinge Medical College and Smt Sucheta Kriplani Hospital. He was given treatment and electric shocks for mental disorder up to June, 2002.

20.04.2002: It is alleged that a complaint was made to the police, but the police illegally helped the accused persons and closed the case by obtaining signatures of the complainant on some papers on 20.04.2002.

18.06.2002: Allegedly, a complaint was submitted by the complainant to the Station House Officer of Police Station Nangloi, Delhi-110041 wherein the alleged incidents of 10th and 11th March, 2002 were narrated. It was also indicated in this complaint that the petitioner had used the aforesaid derogatory words. It may be pertinent to note that according to Mr Khan, the learned Counsel for the petitioner, this document is a fabrication and was never given to the said Station House Officer of Police Station Nangloi on 18.06.2002. The status report filed on behalf of the State on 01.05.2006 with regard to this alleged complaint of 18.06.2002 indicates that as per the record of the Police Station Nangloi, the complaint of Shri Chattar Singh Rachhoya dated 18.06.2002 was not received at Police Station Nangloi, Delhi. This aspect will be discussed in detail below.

09/10.11.2003: At about 1.00 a.m., it is alleged that, one person entered the room in which the complainant was sleeping and said that he had been sent by Mandeep. The said person had a revolver in his hand and told the complainant that it is an order from the petitioner and he has been sent by co-accused Bijender Singh and Mandeep that the complainant should make an attempt at self-immolation in front of the office of Smt Sonia Gandhi at 10, Janpath at 4.00 p.m. in the evening on that day and that they would help the complainant. The said intruder is alleged to have threatened the complainant to kill him in the event he did not do so and fired a shot at the bedding of the complainant by saying that this was being done as an example as to what would happen to the complainant if the self-immolation attempt was not made by him. The intruder then ran away.

10.11.2003: At the suggestion of his parents, the complainant made a phone call at the No. "100". The complainant is said to have made the report at the Police Control Room at 1.00 p.m. itself. This was recorded in the daily diary vide DD No. 23A dated 10.11.2003.

10.11.2003: As the complainant had no faith in the police officials who were sent to investigate, the complainant is said to have gone to Police Headquarters and met the Joint Commissioner of Police [Shri Satish Chander] and submitted a

written complaint dated 10.11.2003. Mr Khan, the learned Counsel for the petitioner, pointed out that in this written complaint submitted to the Joint Commissioner of Police, the complainant, though primarily referring to the incident of 09/10.11.2003, made a clear reference to the alleged incidents of 10.03.2002 and 11.03.2002, when the complainant was allegedly called to the office of the petitioner and threatened to withdraw his candidature. However, what is conspicuous by its absence is that there is no reference whatsoever to any derogatory words having been uttered by the petitioner to the complainant on that day, i.e., on 11.03.2002.

13.02.2004: A complaint u/s 156(3) of the Code for registration of a case/FIR was filed in the court of the CMM, Delhi by the complainant. In this complaint, it was alleged by the complainant that the accused had committed cruelty and atrocities on the complainant and although complaints had been lodged with the local police as well as the higher authorities, proper investigation was not being conducted by the police. The prayer made in the application was that the concerned SHO/IO be directed to investigate into the matter and register a case u/s 452/435/341/307/325/506/201/120-B/34 IPC read with Section 27 of the Arms Act. Mr Khan, the learned Counsel for the petitioner, again pointed out that what is significant is that there was no mention of any offence under the SC & ST Act in this complaint also. The detailed complaint was filed Along with the said application u/s 156(3) of the Code. A copy of the complaint is at pages 26 to 37. Four things require to be noted. First of all, the alleged incidents of 10.03.2002 and 11.03.2002 have been narrated in detail. Secondly, in this narration, there is no mention of any derogatory words having been uttered by the petitioner against the complainant. Thirdly, there is no mention of the provisions of the SC & ST Act in the prayer clause whereby the court was requested to summon, try and punish the accused persons. Fourthly, there is no mention of the complaint dated 18.06.2002 allegedly made by the complainant at Police Station Nangloi.

19.03.2005: The learned Metropolitan Magistrate noted in his order that enquiry in respect of DD No. 23/A dated 10.11.2003 could not be conducted as the complainant was not ready to give his statement. It is further recorded that the learned Counsel of the complainant submitted that the complainant is now ready to give his statement to the I.O. Accordingly, the learned Metropolitan Magistrate directed the I.O. to deal with the said DD No. 23/A dated 10.11.2003, P.S. Nangloi in accordance with law and to submit its report on 21.05.2005.

13.05.2005: A detailed statement was made by the complainant before the police. The same was signed by the complainant and was attested by the police officials at Police station Nangloi. In this statement also, the incidents of 10.03.2002 and 11.03.2002 are mentioned, but, there is no mention of the petitioner having uttered the words in question.

21.05.2005: The learned Metropolitan Magistrate noted in his order of this date that I.O. Satish Kumar of P.S. Nangloi is present and has filed the status report stating that on enquiries made on DD No. 23/A dated 10.11.2003, the fact as

alleged by the complainant could not be substantiated. The learned Metropolitan Magistrate observed that since an enquiry had already been conducted, it was not worthwhile to ask the police to now register an FIR on the same facts. However, he directed that the complainant was free to lead pre-summoning evidence and it is for this purpose that the matter was directed to be listed on 28.05.2005.

28.05.2005: The complainant's statement as CW-1 was recorded before the learned Metropolitan Magistrate. Here, he, inter alia, stated the p2 following:

Sajjan Kumar told that how dare you to contest against my candidate. He/Sajjan Kumar told that ""Tu Chura Hamare Khilaf Ladne Ki Himmat Karega.

Thereafter: Arguments were heard after the aforesaid recording of pre-summoning evidence.

07.07.2005: The learned Metropolitan Magistrate directed further enquiry to be conducted u/s 302 of the Code on three points, viz:

- 1) The identity of the assailant and the fire arm used to fire the gun shot on 10.11.2003, as recorded vide DD No. 23-A dated 10.11.2003.
- 2) The nature of injuries sustained by the complainant on 11.3.2002 and details of the treatment received by him at the hospital.
- 3) Action, if any taken by the police with regard to the incident dated 11.3.2002.

01.08.2005: Another statement of the complainant was recorded by the police. In this statement, the complainant reiterated the allegation with regard to the use of derogatory words by the petitioner as he had stated before the court on 28.05.2005.

24.08.2005: The learned Metropolitan Magistrate, after hearing arguments, noted that the complainant confined his complaint only to the incident of 11.03.2002 since the other incidents are more than one year after the same. The learned Metropolitan Magistrate indicated his prima facie view that, inter alia, the offences under Sections 3(1)(x) of the SC & ST Act was made out against the petitioner apart from other offences under the IPC. The accused was summoned for 22.12.2005.

22.12.2005: Fresh summons were directed to be issued by the learned Metropolitan Magistrate, returnable on 04.02.2006.

28.01.2006: The present application u/s 438 read with Section 482 of the Code was moved before this Court.

31.01.2006: This Court issued notice and stayed the operation of the order dated 24.08.2005 till the next date of hearing. The trial court record was summoned for the next date of hearing which was fixed for 24.04.2006. It is to be noted that on 31.01.2006, the complainant was present in person.

04.02.2006: The Metropolitan Magistrate was notified of the passing of the order dated 31.01.2006 and a copy was placed on record. The matter was adjourned to 03.05.2006 (i.e., after the date fixed before this Court).

04.02.2006: On 04.02.2006 itself, the complainant moved an application before the learned Metropolitan Magistrate which is at page 261 of the trial court file indicating that the petitioner had filed an application for bail on 28.01.2006, but that the court had not granted bail and the next date in that matter was 24.04.2006. He, however, did not mention that the order dated 24.08.2005 had been stayed by the High Court on 31.01.2006 which he was aware of as he was present in court on that date as indicated above. Along with this application, the petitioner appended a document which was purportedly dated 18.06.2002 and finds its place at page 263 of the trial court file. This is that document which the complainant is said to have handed over to the SHO of Police Station Nangloi on 18.06.2002 wherein he is said to have made the allegation for the first time that the petitioner had uttered the words in question. Referring to these documents at page 261 and 263 of the trial court record, Mr Khan submitted that these documents were introduced into the Trial Court file without the permission of the court and for the sole purpose of placing on record the document dated 18.06.2002 which was not on record prior to 04.02.2006. The State has already submitted its status report that no such document was received in the concerned police station on 18.06.2002. This document was not in the trial court record when the summoning order dated 24.08.2005 was passed. This document is not mentioned in the complaints filed by the complainant as indicated above. Mr Khan, Therefore, contended that because the High Court had stayed the summoning order dated 24.08.2005 and had directed the summoning of the trial court record for the next date of hearing, the complainant surreptitiously moved an application on 04.02.2006 and Along with this application the said purported complaint dated 18.06.2002 was annexed. He submitted that knowing that the High Court had stayed the operation of the order dated 24.08.2005, the complainant had moved this application on 04.02.2006 praying that the appropriate action be taken in the matter as early as possible and orders be passed in public interest. Such an application could not have been moved and the only purpose for moving an application was to somehow or the other introduce the document dated 18.06.2002 into the file of the trial court which had been sent for by this High Court. The object being to see that bail is denied to the petitioner.

5. These are the facts and circumstances which give rise to the present application u/s 438 CrPC. Before the arguments on law and the precedents cited by both the parties are examined, it would be necessary to set out the relevant provisions of the SC & ST Act. Section 3(1)(x) of the SC & ST Act reads as under:

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

XXXX XXXX XXXX XXXX XXXX

(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;

xxxx xxxx xxxx xxxx xxxx

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.

2. xxxx xxxx xxxx xxxx xxxx

Section 18 of the said Act reads as under:

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.

6. Mr Khan, the learned Counsel for the petitioner, referred to the decision of a learned single judge of the Karnataka High Court in the case of Chandra Poojari Vs. State of Karnataka, . Referring to paragraph 7 of the said decision, Mr Khan, submitted that in order to attract the provisions of Section 3(1)(X) of the SC&ST act, it is necessary that the words should have been uttered in a place where the public could view the incident. If the derogatory words were uttered at a private place then the essential ingredient of Section 3(1)(X) of the SC&ST act would not be satisfied.

7. He then referred to the decision in Smt. Deepa Bajwa Vs. State and Others, . In paragraph 6 of the said decision, a learned single judge of this Court, considering the facts and circumstances of the case before it, observed that the complaint, on the basis of which the complainant seeks the registration of an FIR, must disclose the essential ingredients of the offence and in case the complaint lacks or is wanting in any of the essential ingredients, the lacuna or deficiency cannot be filled up by obtaining an additional complaint or a supplementary statement and by thereafter proceeding to register the FIR. The court observed that if such a course were to be permitted, it would give undue latitude as well as opportunity to unscrupulous complainants to nail others by hook or by crook in spite of the fact that the initial complaint does not make out the offence complained of. The court concluded that such a course would be an utter abuse of the process of law and that the first version as disclosed in a complaint is always important for adjudicating as to whether an accused has committed an offence or not. In the light of these observations, Mr Khan submitted that it is only after almost 3 years of the incident that the complainant for the first time in his statement before the court leveled the allegation against the petitioner of having used the derogatory words. He submitted that in all intervening complaints there was no mention of any such words having been used by the petitioner. He submitted that even in the complaint filed before the Metropolitan Magistrate u/s 156(3) of the code, there was no mention of the

words having been uttered by the petitioner. In fact, the provisions of the SC&ST act were not even mentioned therein.

8. In Ramesh Prasad Bhanja and Others Vs. State of Orissa, another decision relied upon by Mr Khan, a learned single judge of the Orissa High Court, while considering the provisions of Section 18 of the SC&ST act was of the view that the expression "accusation of having committed an offence under this act" did not mean that the mere registration of a case under the act would ipso facto attract the prohibition contained in Section 18. The learned single judge observed that the opinion of the police regarding the nature of the alleged offence is neither final nor conclusive. The court further observed:

Merely because a case is mechanically registered under the act, the provision of Section 438 of the code cannot be said to be inapplicable in each and every case. If the allegations make out a prima facie case u/s 3 or for that matter Sections 4 and 5 of the act, the jurisdiction to entertain an application u/s 438 is definitely ousted. Where however, the allegations do not make out any prima facie case punishable under any of the provisions of the act, the bar u/s 18 is inapplicable and the provision of Section 438 of the code can be availed of.

9. Considering the provisions of the SC&ST Act and, after noticing the decision of the Supreme Court in AIR 1995 1198 (SC) a learned single judge of this Court, in the case of Mukesh Kumar Saini and ors Vs. State (Delhi Administration), observed as under:

6. There cannot be any dispute about the proposition of law that anticipatory bail cannot be availed by the persons, who have committed the offences under the SC/ST Act. However, merely because a section of the SC/ST Act mentioned in the FIR, by itself cannot be a ground to decline the pre-arrest bail. Judicial scrutiny of the documents, is permissible, to evaluate whether the material relied upon by the prosecution reveals the existence of basic ingredients of the offence or not. The Court can sift the material for this limited purpose.

The Court, after reproducing the provisos of Section 3(1)(x) of the SC&ST Act, held:

7. The basic ingredients of the offence under Clause (x) of Sub-section (1) of Section 3 of the SC/ST Act are : (a) that there must be an "intentional insult" or "intimidation" with "intend" to humiliate SC/ST member by a non-SC/ST member; and (b) that insult must have been done in any place within the "public view". The use of expression "intentional insult or intimidation" with "intention" to humiliate, makes it abundantly clear that the means read is an essential ingredient of the offence and it must also be established that the accused had the knowledge that the victim is the SC/ST and that the offence was committed for that reason. Merely calling a person by caste would not attract the provisions of this Act. There must be specific accusation alleged against each of the accused. Section 34 of the Indian Penal Code cannot be pressed into service. Omnibus statement that all the accused persons uttered allegedly humiliating

words may not be enough. This being a penal provision has to be given a strict interpretation. If any of the ingredient is found lacking, it would not constitute the offence. Reference in this regard can be made to the various decisions referred to at the Bar, reported in Chandra Poojari Vs. State of Karnataka, ; Haridas Shinde Vs. State of Maharashtra, Ramesh Prasad Bhanja and Others Vs. State of Orissa, Munir Khan v. State of Rajasthan 1991 (2) RLW 309; Pankaj D. Suthar v. State of Gujarat 1992 (1) GuJ.LR 405 , and Karan Singh and Others Vs. The State of M.P.,

8. As per the complainant's own showing some electrician of DESU restored the electricity to the house of petitioners and the electric supply to the rest of the area was not restored. The complainant Raj Kumar, raised objection with the electrician, his brother Hanuman also came at the spot from his shop was allegedly dragged by the petitioners inside their shop using above noted humiliating words. Complainant's brother raised alarm; neighbours reached there, and rescued him. Thereafter, it is alleged that the public angrily broke glass panes of their shop. As per the FIR, humiliating words were uttered while Hanuman being dragged inside before the arrival of neighbours, Therefore, these words cannot be said to have been uttered in the "public view". Thus basic ingredients of the offence u/s 3(1)(x) of the SC/ST Act are not made out. Further, admittedly, two cross cases were registered. Both the parties were injured. Section 3 of the SC/ST Act was not initially mentioned in the FIR. Possibility of the complaint having a grudge in getting the petitioners arrested cannot be ruled out.

In these circumstances, the Court found that the provisions of Section 438 of the Code were not inapplicable and granted the benefit of pre-arrest bail to the petitioners therein.

10. The expression "public view" was the subject matter of controversy in Daya Bhatnagar and Ors v. State CrI.W. No. 402/2001. There was a difference of opinion between V.S. Aggarwal and B.A. Khan JJ and a reference was made to a third hon'ble judge [S.K. Agarwal JJ] who, agreeing with the interpretation given by B.A. Khan J, observed:

19. The SC/ST Act was enacted with a laudable object to protect vulnerable section of the society. Sub-clauses (i) to (xv) of Section 3(1) of the Act enumerate various kinds of atrocities that might be perpetrated against Scheduled Castes and Scheduled Tribes, which constitute an offence. However, Sub-clause (x) is the only clause where even offending "utterances" have been made punishable. The Legislature required "intention" as an essential ingredient for the offence of "insult", "intimidation" and "humiliation" of a member of the Scheduled Casts or Scheduled Tribe in any place within "public view". Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression

"public view" in Section 3(1)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded. I am again in agreement with the interpretation put on the expression "public view" by learned brother Mr. Justice B.A. Khan. The relevant portion of his judgment reads as under:

I accordingly hold that expression within "public view" occurring in Section 3(1)(x) of the Act means within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way. If such group of people comprises anyone of these, it would not satisfy the requirement of "public view" within the meaning of the expression used.

20. In the light of the above discussion, one part of the first question under reference, namely, "What is the correct and real meaning of expression "public view" occurring in Section 3(1)(x) of SC/ST (POA) Act, 1989," stands answered." [see: Daya Bhatnagar and Others Vs. State,

11. The learned Counsel for the complainant, first of all, referred to the decision of a full bench of the Rajasthan High Court in Virendra Singh Vs. State of Rajasthan, In Virender Singh (supra), the Full Bench of the Rajasthan High Court, referring to decisions of the Supreme Court and in particular to the case of State of M.P. v. R.K. Balothia (supra), observed that in view of the ratio of these judgments, there was no scope left for the Full Bench to enter into the question regarding the extent and scope of the interpretation of Section 18 of the SC&ST Act on the ground of curtailment of personal liberty for once a person is accused of an offence and a case is registered against him under the said Act, the court of Sessions and the High Court, in view of the clear bar of Section 18 of the said Act would be precluded from entering into the inquiry of the allegations leveled against the accused. The Full Bench was of the view that if courts were permitted to enter into a roving inquiry with regard to the allegations, the whole purpose and effect of the Section would be totally defused and would make it otiose and redundant. The Full Bench observed that if a person is even accused of committing an offence under the SC&ST Act, the intention of Section 18 thereof is clearly to debar him from using the remedy of anticipatory bail and it is only in the circumstances where there is absolutely no material to infer as to why Section 3 has been applied to implicate the person for an offence under the said Act, the courts would be justified in a very limited sphere to examine whether the application can be rejected on the ground of its maintainability. In this context, the Full Bench of the Rajasthan High Court further observed that while dealing with an application for anticipatory bail, the courts would be justified in merely examining as to whether there is at all an accusation against the person

for registering a case u/s 3 of the SC&ST Act and once the ingredients of the offence are available in the FIR or the complaint, the courts would not be justified in entering into a further inquiry by summoning the case diary or any other materials as to whether the allegations are true or false or whether there is any preponderance of probability of commission of such an offence. The Full Bench held as under:

...In our opinion, the Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegation made in the FIR or the complaint by calling for the case diary, charge sheet or any other material gathered at the time of investigation but, if the allegations in the FIR or the complaint even if they are taken at their face value are accepted in their entirety do not constitute the offence alleged, it is only in those miniscule number of cases, the Courts would be justified in entertaining the application, not because it is maintainable but clearly because the Act would be inapplicable in the facts and circumstances of that particular case. Thus the application for anticipatory bail can be entertained only on the ground of inapplicability of the Act of 1989 due to the facts of the case which will have to be gathered only from the FIR and not beyond that because once it is gathered from the FIR that the applicant is accused of committing an offence laid down u/s 3 of the Act of 1989, the bar of Section 18 would instantly operate against the person who has been made an accused of the offence under the Act of 1989. To put it differently, once it is apparent from the FIR that an offence under the Act of 1999 is even alleged, the Courts would not be justified at all in weighing or scrutinising the preponderance of the probability of commission of the offence by the accused, but if from the FIR itself the ingredients of offence as laid down u/s 3 of the Act itself is found to be missing, the bar created by Section 18 would not be allowed to operate against an accused and only in that event his application for anticipatory bail would be dealt with by the concerned Court to determine whether the Act of 1989 can be said to be rightly applicable against the accused and not to enter into further enquiry into the matter so as to determine whether the allegations leveled against the accused in the FIR are true or false and there would be no justification to enter into the matter further in order to examine whether the allegations leveled against the accused are even prima facie correct or incorrect. Any other interpretation, in our opinion, would go against the letter and spirit of the clear provisions of Section 18 of the Act of 1989 which has already stood the test of reasonableness and constitutional validity up to the level of the Apex Court.

12. The learned Counsel for the complainant also referred to the decision of the Supreme Court in Balothia's case (supra) which, inter alia, essentially considered the constitutional validity of Section 18 of the the SC&ST Act and found the same to be valid. The learned Counsel also referred to the decision of the Full Bench of Rajasthan High Court in the case of Jai Singh and Another Vs. Union of India (UOI) and Others, which was also referred to with approval in Balothia's case (supra). This decision also pertains to the interpretation and intention behind the

provisions of the SC&ST Act.

13. Considering the arguments advanced by the counsel for the parties and after examining the factual position as indicated above, I am of the view that in this case the application of Section 438 of the Code would not be barred. As indicated in *Virender Singh (supra)*, a case relied upon by the learned Counsel for the complainant himself, it is not as if, a High Court faced with an anticipatory bail application in respect of an alleged offence which has reference to Section 3 of the SC&ST Act, is entirely barred from any further examination. Even the Full Bench decision of the Rajasthan High Court has taken the view that the court would be justified while dealing with an application for anticipatory bail in examining as to whether the ingredients of the offence u/s 3 of the SC&ST Act are available in the FIR or the complaint. The courts, however, would not be justified in entering into a further inquiry by summoning the case diary or any other material as to whether the allegations are true or false or whether there is any preponderance of probability of commission of such an offence. Therefore, the court has a degree of latitude in examining an application u/s 438 even though Section 3 of the SC&ST Act is mentioned in the FIR or complaint. However, this degree of latitude is within very narrow confines and is limited to examining as to whether the ingredients of the offence u/s 3 of the SC&ST Act are available on the allegations contained in the FIR or the complaint. One of the essential ingredients of an offence u/s 3(1)(x) of the SC&ST Act is that the derogatory words must have been uttered in a place where the public could view the incident. If the derogatory words were uttered at a private place, then the essential ingredients of Section 3(1)(x) of the SC&ST Act would not be satisfied. This is what has been held by a learned Single Judge of the Karnataka High Court in *Chandra Poojari (supra)*.

14. In *Mukesh Kumar Saini (supra)*, this Court had also come to the conclusion that merely because a Section of the SC&ST Act is mentioned in the FIR, this by itself cannot be a ground to decline pre-arrest bail. As noted above, this Court further held that judicial scrutiny of the documents would be permissible to evaluate whether the material relied upon by the prosecution reveals the existence of the basic ingredients of the offence or not. One of the ingredients of Section 3(1)(x) of the SC&ST Act was again held to be that the insult must have been done in any place within the "public view". In *Daya Bhatnagar (supra)*, the meaning of the expression "public view" was settled. The court held, as indicated above, that the expression "public view" occurring in Section 3(1)(x) of the SC&ST Act meant within the view of a group of people of the place/locality/village as distinct from a few who are private and are as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way. In other words, the derogatory words ought to have been uttered by the accused to the complainant in the presence of others not connected with the complainant and not being a member of the accused party. In the present case, an examination of the allegations against the petitioner does

not disclose this element and or ingredient of the derogatory words having been uttered in public view. I make it clear that I am not examining the veracity of the statements and or accusations, but having taken the accusations on face value itself, the same do not appear to have been made in public view which is an essential ingredient of Section 3(1)(x) of the SC&ST Act. Therefore, the provisions of Section 18 of the SC&ST Act would not be applicable and, consequently, Section 438 of the Code would not be inapplicable.

15. It must further be pointed out that I am in agreement, *prima facie*, with the submissions made by Mr Khan that the allegations qua the offence u/s 3(1)(x) of the SC&ST Act were made by the complainant for the first time after almost three years of the alleged incident. It is also pertinent to note that in all the complaints till the date on which the complainant made the statement as CW-1 at the pre-summoning stage, there is no mention of any derogatory words having been used by the petitioner although the incidents of 11.03.2002 have been referred to in all the intervening written complaints in detail. In fact, if one were to look at the complaint filed by the complainant before the Metropolitan Magistrate u/s 156(3) of the Code, one finds no mention of the words having been uttered by the petitioner. Therefore, if the complaint as filed before the Metropolitan Magistrate is taken at face value, there is nothing contained therein which has reference to any offence u/s 3(1)(x) of the SC&ST Act. I also find that, *prima facie*, no complaint dated 18.06.2002 was made by the complainant as alleged. The circumstances under which the copy of the purported complaint dated 18.06.2002 was introduced into the Trial Court file have already been discussed in detail above. *Prima facie*, the complainant's allegation that the purported complaint dated 18.06.2002 was made but was not heeded, does not inspire any confidence. As indicated above, even in the complaint filed before the Metropolitan Magistrate u/s 156(3) of the Code, there is no mention of any such complaint dated 18.06.2002 having been made by the complainant at Police Station Nangloi.

16. The learned Counsel for the complainant submitted that since the Metropolitan Magistrate had taken a *prima facie* view that Section 3(1)(x) of the SC&ST Act was attracted and had passed the summoning order on 24.08.2005, this application for bail u/s 438 of the Code could not be entertained as long as the order dated 24.08.2005 was not set aside. I am afraid, I cannot subscribe to this view. The powers exercisable by the High Court u/s 438 of the Code cannot be circumscribed by orders passed by a Magistrate at the summoning stage. While considering an application u/s 438 of the Code, the High Court has to undoubtedly examine the necessary parameters including the question as to whether the bar of Section 18 of the SC&ST Act would come into play. But, this consideration is independent of any order that the Metropolitan Magistrate may have passed. While it is true that observations and views expressed by a learned Magistrate, if tenable and germane to the issue at hand, should not be lightly brushed aside but, this does not mean that a view taken by the Magistrate at the summoning stage would be binding on the High Court considering an application

u/s 438 of the Code.

17. Considering all the facts and circumstances of the case, I am of the view that the bar of Section 18 of the SC&ST Act would not come into play. That being the case, the petitioner, on the basis of the factual matrix, indicated above, would be entitled to the benefit of pre-arrest bail. Accordingly, the petitioner, in the event of his arrest, shall be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of the arresting officer. The petitioner shall not, directly or indirectly, make any threat to the complainant. It is clarified that the views expressed in this order are only of a prima facie nature and are limited to this application for bail.

This application stands disposed of.