

(2023) 10 CAL CK 0076
In the Calcutta High Court
Case No : CRM (A) No. 2859 Of 2023

Sudip Mondal & Ors.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 19-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 15(a), 17, 21, 142
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3, 3(1), 3(2)(iii), 3(2)(iv), 14, 15A, 15A(3), 15A(5), 15A(6), 18, 18A
Code Of Criminal Procedure, 1973 — Section 436, 437, 438, 439, 482
Indian Penal Code, 1860 — Section 376, 436

Citation : (2023) 10 CAL CK 0076

Hon'ble Judges : Chitta Ranjan Dash, J; Partha Sarathi Sen, J

Bench : Division Bench

Advocate : Uday Sankar Chattopadhyay, Santanu Maji, Snigdha Saha, Trisha Rakshit, Saswata Gopal Mukherji, Imam Ali, Debjani Sahu

Final Decision : Disposed Of

Judgement

Chitta Ranjan Dash, J

1. The question that arises for our consideration in the present petition of anticipatory bail is whether the bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("S.C. S.T. Act" for short) as amended in 2015 and 2018 is absolute.

2. The S.C. S.T. Act came into force w.e.f. 30.01.1990. It needs no mention that, this Act is relatable to the expression 'Law' in Article 17 of the Constitution of India. The objects and reasons of the S.C. S.T. Act clearly pronounce that the members of the S.C. & S.T. communities remain vulnerable and they are denied number of civil rights in the society. They are also subjected to numerous humiliation and harassments.

2.1. Since the Protection of Civil Rights Act (1951) and the general provisions of the Indian Penal Code were found inadequate to meet the situations faced by the

members of the S.C. & S.T. communities, a special legislation in the form of S.C. S.T. Act was promulgated to check and deter crimes against the members of the S.C. & S.T. communities. Recently, some important amendments were brought into the S.C. S.T. Act. Said Amendment of 2015 has come into force w.e.f. 26.01.2016 to further the objects outlined supra. In the S.C. S.T. Act, Section 18 of the Act bars jurisdiction of the competent courts so far as application under Section 438 of the Code of Criminal Procedure to persons committing an offence under the S.C. S.T. Act is concerned. The vires of Section 18 of the S.C. S.T. Act barring application of Section 438, Cr.P.C. to the offences under the Act was the subject matter of challenge before Hon'ble the Supreme Court in an Appeal by the State of Madhya Pradesh. Hon'ble the Supreme Court in the said case (State of Madhya Pradesh vrs. R.K. Balothia, A.I.R. 1995 SC 1198) held that the provision of Section 18 of the S.C. S.T. Act is intra vires. Hon'ble the Supreme Court further proceeded to observe that the offences enumerated in Section 3 of the said Act are committed to humiliate and subjugate the members of the S.C. & S.T. communities, and these offences constitute a separate class and cannot be compared with offences provided in the Indian Penal Code.

3. Subsequently, in umpteen decisions, Hon'ble the Supreme Court and different High Courts dealt with the question of bar of Section 438, Cr.P.C. in Section 18 of the S.C. S.T. Act.

3.1. In the case of Vilas Pandurang Pawar and Another vrs. State of Maharashtra and others, AIR 2012 SC 2216 (Para-9 at Page-3319), Hon'ble the Supreme Court held that, where an offence is registered against a person under the provision of S.C. S.T. Act, no Court shall entertain any application for anticipatory bail unless it prima facie finds that such an offence is not made out. Hon'ble the Supreme Court, again in the case of Sakuntala Devi vrs. Balinder Singh, (2014) 15 SCC 521, relying on the case of Vilas Pandurang Pawar (supra) held that the High Court is required to give a finding that an offence under the Act has not been made out before granting anticipatory bail (para-4). Same is the view of Hon'ble the Supreme Court in the case of Bachu Das vrs. State of Bihar and others, (2014) 3 SCC 471.

3.2. Hon'ble the Supreme Court in Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra & Anr. [(2018) 6 SCC 454] took cognizance of misuse of provisions of S.C. S.T. Act and in paragraph 79.3, 79.4 and 79.5 held thus :

"79.3. In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of public servant can only be after approval of the appointing authority and of a non-public servant after approval by the SSP which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinised by the Magistrate for permitting further detention.

79.4. To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a

case under the Atrocities Act and that the allegations are not frivolous or motivated.

79.5. Any violation of Directions 79.3 and 79.4 will be actionable by way of disciplinary action as well as contempt.”

3.3. The aforesaid order was brought before the larger Bench of Hon’ble the Supreme Court in Union of India Vs. State of Maharashtra & Ors. [(2020) 4 SCC 761], wherein three Judges Bench of Hon’ble the Supreme Court in paragraph 70 of the Judgement held thus:

“We do not doubt that directions encroach upon the field reserved for the legislature and against the concept of protective discrimination in favour of downtrodden classes under Article 15(a) of the Constitution and also impermissible within the parameters laid down by this Court for exercise of powers under Article 142 of the Constitution of India. Resultantly, we are of the considered opinion that Directions 79.3 and 79.4 issued by this Court deserve to be and are hereby recalled and consequently we hold that Direction 79.5, also vanishes. The review petitions are allowed to the extent mentioned above.”

3.4. In response to the Judgement of Hon’ble the Supreme Court in the case of Dr. Subhash Kashinath Mahajan (supra), Section 18A was brought into S.C. S.T. Act by an amendment in 2018 which reads thus:

“18A. No enquiry or approval required. – (1) For the purpose 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 provision 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.”

[Ins. by Act 27 of 2018 (w.e.f. 20.08.2018)]

3.5. In Prathvi Raj Chauhan Vs. Union of India & Ors. [2020 (4) SCC 727] vires of Section 18 and 18A of S.C. S.T. Act was affirmed and it was further held that where prima facie case is not made out, anticipatory bail can be granted in appropriate circumstances with a cautious exercises of power. It was further held that Section 18 and Section 18A of the S.C. S.T. Act have no application where prima facie case is not made out. However, for evaluating prima facie case re-appreciation of evidence is not required.

Hon’ble the Supreme Court went further to lay down that Section 18A of the S.C. S.T. Act has to be read in accordance with law laid down in Lalita Kumari [2014

(2) SCC 1]. Thus, it was held that preliminary enquiry before registration of F.I.R. in respect of offences under the S.C. S.T. Act can only be resorted to in circumstances enumerated in Lalita Kumari supra.

3.6. A Division Bench of this Court in Pradipta Biswas Vs. State of West Bengal (2019 SCC Online CAL 9179) : [2019 (1) CHN 693] after discussing various decisions of Hon'ble the Supreme Court and especially provision of Section 18A of the S.C. S.T. Act held that notwithstanding incorporation of Section 18A into the statute limited jurisdiction of the Court to examine the uncontroverted allegation in the F.I.R. to see whether such allegations when taken at their face value disclose ingredients of such offence is not taken away.

4. The S.C. & S.T. (Amendment) Act, 2015 came into force w.e.f. 26.01.2016. It is seen from Section 3, which provides for punishment for offences of atrocities that the Section has been substantially amended and more categories of atrocities constituting offence under the said Act have been provided. Section 14 of the Act providing for establishment of Special Court has been amended, authorizing the Special Court to take cognizance of the offence. So far as Section 18 is concerned, the same remains unaltered. It is also to be noted that, in Chapter IV-A, Section 15-A has been inserted, and relevant provisions of Section 15-A so far as the present discussion is concerned, reads as follows :-

15-A. Rights of victims and witnesses. –

(1) xx xx xx xx

(2) xx xx xx xx

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) xx xx xx xx

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.

xx xx xx xx

5. It is seen from the aforesaid provisions that, notice of "any proceeding before the Court" is a right on the part of the victim or his dependent. The word "shall" in the opening sentence of Sub-Section (3) of Section 15-A and the words "reasonable, accurate and timely notice" read with the provisions contained in Sub-Section (5) of Section 15-A makes it clear that such notice is mandatory. As the notice under Sub-Section (3) of Section 15-A is held to be mandatory, the Court is to be satisfied that the victim or his/her dependent has received "reasonable, accurate and timely notice" of "any court proceeding" including bail

proceeding. The question that arises now whether notice is to be served through court process or through any other agency. Sub-Section (3) of Section 15-A, in clear terms following the conjunction 'and' enjoins the duty on the Special Public Prosecutor / Public Prosecutor or the State Government to inform the victim about any proceeding under the Act. Therefore, it is the duty of the persons seeking bail, to serve two applications for bail on the Special Public Prosecutor / Public Prosecutor, out of which one is to be sent as notice to the victim or his/her dependent. If the Special Public Prosecutor / Public Prosecutor so requires, more number of copies of such petitions are to be served on him for the purpose of such notice. Factum of any proceeding before the Special Court under this Act is to be noticed to the victim or his/her dependent through the Special Public Prosecutor / Public Prosecutor or the State Government, as the case may be. Before taking up "any proceeding" including the bail proceeding, the Special Court or the Court in seisin over the matter is to satisfy itself that the Special Public Prosecutor / Public Prosecutor has given "reasonable, accurate and timely notice" of any Court proceeding including any bail proceeding to the victim or his/her dependent. Such satisfaction can be reached by seeking a written undertaking of affidavit of service from the Special Public Prosecutor / Public Prosecutor or the agency of the State Government, through their office as the case may be, about the notice received by the victim or his/her dependent about the proceeding.

5.2. The provision of Sub-Section (3) of Section 15-A is therefore held to be mandatory in nature, non-compliance of the provision has to negate, frustrate or make otiose, the relief granted to a party without noticing the victim or his/her dependent. It is however worthwhile to mention here that, though notice under Sub-Section (3) of Section 15-A of the Act is mandatory in nature, presence of the victim or his/her dependent in course of the proceeding is not mandatory. On receipt of notice, it is left to the choice of the victim or his/her dependent to participate or not to participate in the proceeding.

6. Keeping in view the aforesaid discussion and provisions in mind about the scope of entertaining application under Section 438, Cr.P.C. so far as the offences under S.C. S.T. Act are concerned, we feel persuaded to address the following issue:

(i) After the amendment of the S.C. & S.T. Act in January, 2016 and 2018, whether any facilitatory relief can be granted to the accused-petitioner directing him to move the Special Court for bail, and whether in the interregnum period (i.e., from the date of passing of the order by this Court and the date when the Special Court is moved for bail) any interim protection can be given to him, and whether the Special Court while hearing the bail application can grant interim bail to the petitioner without waiting for sufficiency of notice on the victim or his/her dependent.

6.2. Before proceeding to address this issue Mr. Saswata Gopal Mukherji, learned P.P. submits that, once the application under Section 438 Cr.P.C. is rejected, no

order can be passed directing the petitioner(s) to surrender before the competent court and make a motion for regular bail before that court and the competent court further cannot be directed to release the petitioner(s) on bail on the basis of the said motion on such terms and conditions as deemed just and proper. It is further submitted by him that there are decisions of Hon'ble the Supreme Court to the effect that if an anticipatory bail application has been rejected, there could not have been any further direction which would tantamount to conferment of benefit by which the accused would be in a position to avoid arrest. It is, therefore, urged by Mr. Saswata Gopal Mukherji, learned P.P. that once the application for anticipatory bail is rejected, this court is denuded of its power to pass any further order tantamounting to protection of the accused from arrest.

7. Coming to answer the question framed supra, we find that an application under Section 438, Cr.P.C. has been barred in Section 18 of the S.C. S.T. Act. Therefore, at the time of hearing of the anticipatory bail application under Section 438, Cr.P.C. at the first instance, under S.C. S.T. Act, the question arises as to whether at the initial stage of filing of a petition under Section 438 Cr.P.C., the court is to be satisfied that the victim or his/her dependent has to be informed about the existence of the proceeding especially in view of the provisions contained in sub-Section 3 of the Section 15A of the S.C. S.T. Act.

7.1. Mr. Uday Sankar Chattopadhyay, learned Counsel appearing for the petitioner, submits that at the initial stage, it is not necessary for the Court to be satisfied about such notice to the victim or his dependent, in as much as, under the Rules of this Court, the Public Prosecutor must have received notice and he can represent the cause of the victim. Otherwise also when at the first instance the bail application is to be taken for consideration soon after service of notice on the learned Public Prosecutor, it is not possible for him to inform the victim about the date of hearing of the bail matter at that stage. Further it is submitted by him that, as would be seen from Sub-Section (3) of Section 15-A of the S.C. S.T. Act, the legislature has nowhere provided that at the time of a proceeding under the Act being taken up, the presence of the victim is to be ensured. In other words, the presence of the victim or his representation is not mandatory at the time of any proceeding before the Court, but all the same elaborate procedures has been provided for in the S.C. S.T. Act for the protection of the interest of the victim or his/her dependent to secure the ends of justice. But, at the time of final disposal of the bail application under Section 438 Cr.P.C., as submitted by Mr. Uday Sankar Chattopadhyay, learned Counsel, this Court is required to be satisfied that the Public Prosecutor has duly served notice on the victim or his/her dependent and the latter has knowledge of the existence of the proceeding.

7.2. Mr. Saswata Gopal Mukherji, learned P.P. (being assisted by Mr. Imam Ali, Adv. & Ms. Debjani Sahu, Adv.), on the other hand submits that, whatever be the stage of the proceeding, notice to the victim being mandatory under Sub-Section (3) of Section 15-A, such notice is to be given to him notwithstanding his

presence or absence at the time of the proceeding. He agrees with Mr. Chattopadhyay, learned Counsel, to the effect that though notice to the victim or his/her dependent is mandatory, in Sub-Section (3) of Section 15-A, his presence at the time of proceeding is not mandatory, but the Court is to be satisfied that the victim or his/her dependent has received "reasonable, accurate and timely notice".

8. It is no more res-integra that the civilized countries have recognized that, liberty is the most precious of all human rights. American declaration of independence 1776, French declaration of rights of men and citizen 1789, Universal declaration of human rights and the international covenant of civil and political rights 1966, all speak with one voice – liberty is the natural and inalienable right of every human being. Similarly, Article 21 of the Constitution of India proclaims that, no one shall be deprived of his liberty except in accordance with the procedure prescribed by law. Arrest and imprisonment means infringement of precious right of an individual. (Reference may be made to Inder Mohan Goswami and another vrs. State of Uttaranchal and others, (2007) 12 SCC 1). Such being the position of liberty in the eye of the Constitution of India and in the eyes of all civilized countries, it is the duty of every court to protect the liberty of an individual. Sections 436 to 439, Cr.P.C. are provisions dealing with question of liberty of a person, who has been arrested or who has been submitted to the jurisdiction of the Court or who apprehends arrest for a non-bailable offence. Notice through any agency, whosoever he or it may be, takes some time and at the initial stage if any Court has any implicit or incidental power, such power cannot be circumspected or narrowed down for want of notice. Sufficiency or otherwise of notice, as provided under Sub-Section (3) of Section 15-A is to be insisted upon at the final hearing of an application for regular bail or anticipatory bail, in as much as notice instantaneously at the initial stage is far from possibility. At the cost of repetition, we reiterate here that, presence of the victim or his/her dependent at the time of any proceeding including bail proceeding is not mandatorily required. The Court is to be satisfied about "reasonable, accurate and timely notice" to the victim or his/her dependent about the existence of a proceeding including the bail proceeding, and choice is to be left upon the victim or his dependent either to absent himself from the proceeding or to come and participate in the proceeding. Therefore, at the initial stage of hearing of any petition under Section 438, Cr.P.C. or any bail petition if question of exercise of incidental or implicit power arises, the exercise of power by the Court cannot be deferred for want of notice. "Reasonable, accurate and timely notice" of the proceeding, as enshrined in Sub-Section (3) of Section 15-A of the S.C. S.T. Act shall be taken care of at the final stage of hearing of any proceeding including a bail proceeding, may it be anticipatory bail or regular bail.

9. Coming to the question of passing of order of interim protection at the threshold in an anticipatory bail application involving offences under the provisions of S.C. S.T. Act, it is relevant to mention here that Hon'ble the

Supreme Court on more than one occasions has propounded that interim protection can be given by the Court while hearing the bail application under Section 438, Cr.P.C. Reference may be made in this regard to the Constitution Bench decision of Hon'ble the Supreme Court in the case of Gurbaksh Singh vrs. Sarbjit Singh, AIR 1980 SC 1632 and other decisions of Hon'ble the Supreme Court in the case of Savitri Agarwal and others vrs. State of Maharashtra and another, (2009) 8 SCC 325, Rashmirekha Thatoi vrs. State of Odisha, (2012) 5 SCC 661, Bhadresh Bipinbhai Sheth vrs. State of Gujarat and another, AIR 2015 SC 3090. There is no doubt that, this Court is clothed with the power to grant interim protection at the threshold in exercise of the jurisdiction under Section 438, Cr.P.C. irrespective of the nature of the offence.

9.1. The question arises for consideration as to whether such interim protection can be granted in cases involving offences under the provisions of S.C. S.T. Act in view of the clear bar in Section 18 of the S.C. S.T. Act and ruling of Hon'ble the Supreme Court and this Court, as discussed supra, to the effect that before granting anticipatory bail under Section 438, Cr.P.C., a clear finding is to be given that no prima facie offence under the provisions of the S.C. S.T. Act has been committed.

10. Hon'ble the Supreme Court, in the case of Gurbaksh Singh (supra) was considering the question of personal liberty of the individual, as enshrined in Article 21 of the Constitution of India in the context of Section 438, Cr.P.C. In that case, Hon'ble the Supreme Court held that, interim bail can be granted while considering bail application under Section 438, Cr.P.C. and the matter can be re-examined in the light of the contention of the parties at the time of final hearing.

11. Drawing a parlance from the discussion in the aforesaid Constitution Bench decision, Mr. Chattopadhyay, learned Counsel appearing for the petitioner submits that Section 18 of the S.C. S.T. Act cannot act as a fetter on the power of the Court to grant interim protection at the threshold, and it is further submitted by him that a prima facie case about commission of the offence under the S.C. S.T. Act can be found out from the copy of the F.I.R. attached with the application for anticipatory bail at the time of its filing. Further, relying on the case of Dr. Rabindranath Pradhan vs. State of Orissa, 2005 (I) OLR 628, it is submitted by learned Counsel Mr. Chattopadhyay that, interim protection can be given and arrest of the petitioner can be stayed by exercising power under Section 482, Cr.P.C. till availability of the credible evidence against the accused-petitioner.

11.1. It is further submitted by Mr. Chattopadhyay, learned Counsel that the decisions of Hon'ble the Supreme Court and different High Courts as regards Section 18 of the S.C. S.T. Act, as has been referred to supra, in the forgoing paragraphs are relatable and relevant at the time of final disposal of the anticipatory bail application, when all the required materials are available for consideration. But at the threshold, in view of the observation of Hon'ble the Supreme Court in the Constitution Bench decision in the case of Gurbaksh Singh

(supra), this Court is not denuded of any power to grant interim protection in a case involving offence under the provision of S.C. S.T. Act, if this Court is satisfied about the fact that no offence is made out prima facie on reading of the F.I.R. or complaint petition attached with the anticipatory bail application.

12. Mr. Saswata Gopal Mukherji, learned P.P. (being assisted by Mr. Imam Ali, Adv. & Ms. Debjani Sahu, Adv.), on the other hand submits that, interim protection is a matter of discretion of the Court and it is not a matter of right on the part of the accused-petitioner invoking the fundamental right enshrined in Article 21 of the Constitution of India. It is further submitted by him that, in clear terms Hon'ble the Supreme Court and this Court in very many decisions have held that in view of the bar under Section 18 of the S.C. S.T. Act, a petition under Section 438, Cr.P.C. can only be allowed on the basis of the finding that no prima facie case involving offence under the provision of the S.C. S.T. Act is made out from record. Said decisions cannot be stretched to the extent of granting interim protection to an accused involved in committing offence under the provisions of the S.C. S.T. Act. It is further submitted by him that, observation of Hon'ble the Supreme Court in the Constitution Bench decision of Gurbaksh Singh (supra) has no application to the fact of the present case, especially in view of the bar under Section 18 of the Act.

13. In this regard, we feel persuaded to refer to paragraph-2 of the Statement of Objects and Reasons of the S.C. S.T. Act, which reads as follows :-

Statement of Objects and Reasons – The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted with a view to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes and to establish Special Courts for the trial of such offences and for providing relief and rehabilitation of the victims of such offences.

2. Despite the deterrent provisions made in the Act, atrocities against the members of the Scheduled Castes and Scheduled Tribes continue at a disturbing level. Adequate justice also remains difficult for a majority of the victims and the witnesses, as they face hurdles virtually at every stage of the legal process. The implementation of the Act suffers due to (a) procedural hurdles such as non-registration of cases; (b) procedural delays in investigation, arrests and filing of chargesheets; and (c) delays in trial and low conviction rate.

From the aforesaid paragraph, it is clear that, procedural delay in arrest is one of the causes for bringing amendment in the S.C. S.T. Act. When the Act has provided a particular bar in a particular Section, such a bar is total and absolute in contradistinction to partial and relative. Such bar cannot be over-reached unless the tests underlined by Hon'ble the Supreme Court and different High Courts have been satisfied. Hon'ble the Supreme Court and different High Courts in clear terms have held that the Courts are not precluded from entertaining a petition under Section 438, Cr.P.C. despite the bar under Section 18 of the S.C. S.T. Act. But, unless a finding is reached by the Court to the effect that no

offence under the provisions of the S.C. S.T. Act has prima facie been made out from the records of the case, no anticipatory bail can be granted.

13.1. Copy of the F.I.R. filed along with the application for anticipatory bail cannot be held to be an encyclopedia of all the circumstances attending and following a particular transaction. The members of S.C. & S.T. communities are generally rustic and majority of them are illiterate. They cannot be expected to file an F.I.R. satisfying all the ingredients of the offences prescribed in the S.C. S.T. Act. The finding regarding the conclusion that, no prima facie offence under the provisions of the S.C. S.T. Act has been made out, can be reached only on perusal of the entire Case Diary. In view of the bar under Section 18 of the S.C. S.T. Act and the anxiety of the legislature, as outlined in paragraph-2 of the Statement of Objects and Reasons, no interim protection at the threshold can be given to the petitioner filing a petition for anticipatory bail, as it would militate against the provisions contained in Section 18 of the S.C. S.T. Act.

14. So far as this Court is concerned, three kinds of reliefs are granted in a petition for anticipatory bail –

(i) Preemptive or Preventive Relief;

(ii) Substantive Relief; and

(iii) Facilitatory Relief.

Preemptive or Preventive Relief is granted in the form of interim protection, the contents of which varies from Court to Court. Whatever be the content, the offender is protected from arrest by police during currency of the preemptive or preventive relief or till final disposal of the anticipatory bail application.

Substantive Relief is the grant of anticipatory bail to an accused petitioner in a given case on conclusion of hearing.

Facilitatory Relief is generally given by this Court in the form of allowing the petitioner to surrender before the competent court and directing the competent court to dispose of his bail application on merit on the same day or on some date fixed by it (competent court). Such relief is usually granted in a case where the co-accused persons similarly circumstanced with the petitioner have already been released on bail, and where this Court feels that instead of relief in an anticipatory bail, the matter may be dealt with appositely by the appropriate court in a bail proceeding.

15. Taking into consideration the bar under Section 18 of the S.C. S.T. Act and requirement of giving a finding regarding noncommission of offence under the S.C. S.T. Act prima facie by the Court before granting anticipatory bail and the anxiety of the legislature in paragraph-2 of the Statement of Objects and Reasons, as quoted supra, we are of the view that, no preemptive or preventive relief can be given in an application for anticipatory bail involving offence under the provisions of the S.C. S.T. Act.

16. So far as Substantive Relief is concerned, on hearing of the learned Public Prosecutor / Special Public Prosecutor after sufficiency of notice on the victim or his/her dependent under Sub-Section (3) of Section 15-A of the S.C. S.T. Act, if the Court finds that no prima facie offence is made out under the provisions of S.C. S.T. Act against the accused-petitioner, he/she can be granted anticipatory bail (substantive relief).

17. Coming to the Facilitatory Relief, the Court exercising the jurisdiction under Section 438, Cr.P.C. being devoid of any jurisdiction in view of the bar under Section 18 of the Act till a conclusion is reached to the effect that no prima facie offence under the provision of the Act has been made out, no interim protection during the interregnum period (from the date of passing of the order till the date the accused-petitioner moves for bail before the Special Court) can be granted.

18. We have dealt with the question exhaustively in the preceding paragraphs, so far as jurisdiction of this Court in dealing with the petitioners involved in commission of offence under the S.C. S.T. Act in a petition under Section 438, Cr.P.C. is concerned. We have dealt with the jurisdiction of the Court to pass order in an anticipatory bail application and regular bail application at the threshold, and the power of the Court to grant interim protection to a person involved in offence under the S.C. S.T. Act. From our discussion supra, it is clear that, a competent court dealing with a petition for bail under Section 439 Cr.P.C. shall have jurisdiction over the matter to grant interim bail in exercise of incidental and implicit power under the said Section. The question now arises as to whether at the threshold when this Court has reached no conclusion to the effect that no prima facie offence under the S.C. S.T. Act has been made out, can any jurisdiction be exercised by this court to give facilitatory relief, as discussed supra.

19. In our considered view, by invoking the power of general superintendence of the High Court over the Sub-ordinate Courts and by invoking the inherent jurisdiction under Section 482, Cr.P.C., while not entertaining the petition for anticipatory bail this Court in a petition under Section 438, Cr.P.C. can direct the petitioner to approach the Special Court for bail within a specified period. It is no more res integra that by surrendering before the competent Court, the petitioner(s) submit to the jurisdiction of that court and are deemed to be in the custody of that court and any petition filed under Section 439 Cr.P.C. becomes competent and maintainable. In order to apply for bail before the Special Court, the petitioner must have to submit to the jurisdiction of the Special Court by surrendering before that Court. Before seven days of the date of his surrender, which he or his counsel knows better, a copy of the bail application or such number of copies of the bail applications, as may be required by the Special Public Prosecutor / Public Prosecutor, may be served upon him towards notice for compliance of Sub-Section (3) of Section 15-A of the S.C. S.T. Act. On the date of surrender of the petitioner, the Special Public Prosecutor / Public Prosecutor shall have the Case Diary and other relevant records with him in order to assist

the Special Court so far as the question of interim bail is concerned. Without prejudice to any party, we feel persuaded to make it clear that, barring certain grave offences like the offence punishable under Sections 302, I.P.C., 306, I.P.C. (where the petitioner is alleged to have made the victim to commit suicide for harassing him on the ground of his/her caste as S.C. or S.T.), 376, I.P.C., 436, I.P.C., Section 3(2)(iii) and (iv) of S.C. S.T. Act (where the dwelling house of a member of the S.C. & S.T. community has been burnt), Section 307, I.P.C. (where the injuries sustained by the victim /victims are near fatal and he is still in bad shape) coupled with the offence / offences under the S.C. S.T. Act, in all other cases, especially covered under Section 3(1) of the S.C. S.T. Act, interim bail, as a rule, is to be granted to the petitioner(s) on the date of his/their surrender, and the matter of grant or rejection of regular bail can be re-examined in the light of the contentions of the parties and the materials available on record at the time of final hearing of the bail application, after sufficiency of notice on the victim or his dependent in compliance of Sub-Section (3) of Section 15-A of the S.C. S.T. Act.

19.1. The lists of grave offences given above, is not exhaustive and complete. Different Benches sitting at different time, on consideration of the materials on record and the circumstances prevailing in the society at the relevant time, may add to the said list of grave offences, more number of offences.

19.2. From the number of cases filed in Court during our incumbency in the determination, we have found out the aforesaid grave offences usually committed against the members of the S.C. & S.T. communities. Further, we feel worthwhile to mention here that the restraint on the power of the Special Court, so far as the aforesaid grave offences are concerned, is more relative than absolute. In spite of the gravity of the offence as enumerated supra, the Special Court, from the materials on record, may find ground to grant interim bail, and the Special Court may do so in exercise of its judicial discretion in appropriate case.

19.3. We feel further persuaded to observe here that, there is no concept of "interim bail" in the Code of Criminal Procedure. But, it is no more res-integra that grant of interim bail is an incidental / implicit power in the hands of the Court exercising jurisdiction over "regular bail" under Section 439 Cr.P.C. Such a facilitatory relief in an application for anticipatory bail while not entertaining the same, in our view, is a step forward to further the intention of the Constitution-makers so far as the rights enshrined in Article 21 of the Constitution of India is concerned and shall take care of the anxiety of the legislature. No person should unnecessarily be detained awaiting a procedural requirement of notice to the victim or his dependent. But, while granting interim bail on the same day the petitioner surrenders, the Special Court should impose the conditions to protect the interest of the victim and his dependent, and the Special Court should also impose conditions binding down the petitioner to appear before the I.O. for the purpose of investigation at an interval of certain days or weeks, so that the

petitioner cannot be in a position to repeat the offence which is alleged against him, and he cannot avoid the process of law and he cannot keep himself at large.

20. People of S.C. & S.T. communities are generally poor persons. Provision has been made in Sub-Section (6) of Section 15-A to give Travelling Allowances, etc. during investigation, enquiry and trial, to the victim or his dependent. If a victim or his dependent comes to the Court to participate in a proceeding, including a bail proceeding, he is required to be paid with "BATA Expenses", especially taking into consideration his poverty. But the State Government has made no provision for payment of "BATA Expenses" to a victim or his dependent intending or coming to participate in a proceeding in a Special Court under the S.C. S.T. Act, and it is the duty of the State Government to make adequate arrangement for payment of such expenses to a victim or his dependent.

21. In view of such fact, the State Government in Home Department and Finance Department are directed to place at least Rs.50,000/- (rupees fifty thousand) each at the disposal of the Sessions Judge of each districts of the State to meet the "BATA Expenses" to a victim or his dependent belonging to S.C. or S.T. community. On a certificate given by the Public Prosecutor / Special Public Prosecutor or the concerned court regarding participation of a victim or his dependent in a proceeding under the S.C. S.T. Act, the concerned Sessions Judge shall pay "BATA Expenses", as admissible to any witness in a case, to the victim or his dependent who has participated in the proceeding under the S.C. S.T. Act. If such "BATA Expenses" cannot be paid on the same day, the same be sent to the victim or his dependent by Bank Draft or by Money Order, or any other recognised mode of remittance whichever facility is available, within 7 (seven) days of his appearance.

22. A fund of Rs.10,00,000/- (rupees ten lakh) should also be placed at the disposal of the Registrar General, High Court at Calcutta, for the aforesaid purpose, so that "BATA Expenses" can be paid to the victim or his dependent coming to this Court for participating in any proceeding under the S.C. S.T. Act or for meeting the urgent demand of any Sessions Judge for the aforesaid purpose. Such payment can also be made on the basis of the certificate given by the Public Prosecutor or A.C.O. of the concerned court to the victim or his dependent.

23. The aforesaid funds are to be made available to the concerned Sessions Judges and the Registrar General, High Court at Calcutta within a period of four months from today. Till that date such "BATA Expenses" shall be paid by the Collector of the concerned District where the Special Court sits, and such payment by the Collector shall be made through the concerned Special Court on the basis of the certificate given by the Public Prosecutor or the concerned Court.

24. For the purpose of Notice, etc., each Special Public Prosecutor / Public Prosecutor (where there is no Special Court) should be placed with fund of Rs.50,000/- (rupees fifty thousand) at least, and such fund may be spent by the Special Public Prosecutor / Public Prosecutor towards Postal Expenses, "BATA

Expenses” when there is insufficiency of fund with the court and for his office establishment etc. for issuing notice by Post, through the concerned police station or any other recognised mode of service. All these funds are to be released by the appropriate Government on yearly basis. A copy of the order each be communicated to the Secretary to the Government in Finance Department and Secretary to the Government in Home Department to do the needful at their end within the time specified.

25. Before proceeding to discuss the instant application for anticipatory bail on merit, we propose to lay down the gist of our discussion supra :

(i) The bar under Section 18 of the S.C. S.T. Act in respect of a petition for anticipatory bail under Section 438 Cr.P.C. is not absolute.

(i) (a) Such petition may be entertained and allowed in the event the court in session over the matter finds that no offence under the provisions of the S.C. S.T. Act is made out prima facie against the petitioner(s).

(ii) To find out the prima facie case no court should depend only on the F.I.R./ complaint petition inasmuch as a meticulously drafted F.I.R./complaint petition may prejudice the accused and a casually drafted F.I.R. or complaint petition by a member of the S.C. S.T. community or on his/her instruction may prejudice the victim, if anticipatory bail is allowed or denied on reaching a prima facie conclusion regarding existence or non-existence of prima facie case covered by the provisions of the S.C. S.T. Act.

(ii) (a) In reaching the conclusion regarding existence or non-existence of prima facie case, the court should strive to go through the entire C.D. to find out the circumstances attending and following the transaction.

(iii) This court while declining to entertain a petition for anticipatory bail may direct the petitioner(s) to surrender before the competent Court and move petition under Section 439 Cr.P.C. In the event they surrender and move such petition, the competent court may also be directed to release them on interim bail if the offence committed by the accused is not heinous coupled with the offence enumerated in Section 3(1) of the S.C. S.T. Act.

(iii) (a) After hearing the Public Prosecutor/ Special Public Prosecutor regarding sufficiency of notice on the victim or his/her dependant as required under sub-Section 3 of Section 15A of S.C. S.T. Act, the petition for bail shall be taken up for final hearing for disposal on merit in accordance with law irrespective of the fact whether the victim or his/her dependant is present or not.

(iii) (b) When a person surrenders to the jurisdiction of the competent court, it would be deemed that he has surrendered to the custody of the court and in that event a petition under Section 439 Cr.P.C. filed by him/her shall be competent and maintainable.

(iii) (c) In a petition under Section 439 Cr.P.C. the competent court should

address the question of bail in the light of Article 21 of the Constitution of India as done in other offences not covered by provisions of S.C. S.T. Act. For offences covered under the S.C. S.T. Act same principle for bail should be adopted and applied. If offence is not heinous and especially an offence described under Section 3(1) of the S.C. S.T. Act interim bail as a rule should be granted awaiting sufficiency of notice under sub-Section 3 of Section 15A of the S.C. S.T. Act on the victim or his/her dependant.

(iii) (d) Though notice to the victim or his/her dependant is mandatory, their presence in the proceeding is not mandatory.

26. Taking into consideration the aforesaid discussion, so far as the present bail application is concerned, the petitioners are directed to surrender before the Judge Special Court (SC/ST), Burdwan within 15 (fifteen) days from the date of re-opening of the Court after the ensuing Puja Vacation. The petitioners, if so feel, may surrender earlier before the aforesaid date, if the Court is in seisin over the matter during the Puja Vacation. Seven days prior to the date of surrender of the petitioners, copy/copies of the bail application, as required by the Public Prosecutor / Special Public Prosecutor, be served on the learned Public Prosecutor / Special Public Prosecutor for the purpose of notice to the victim or his / her dependent. On the date of surrender, the petitioner shall be admitted to interim bail after hearing the Public Prosecutor / Special Public Prosecutor in the aforesaid case, especially in view of the nature of offence on such terms and conditions as deemed just and proper in the facts and circumstances of the case. The question of rejection or allowing the bail application on merit shall be dealt with at the time of final hearing of the bail application in accordance with law after sufficiency of notice on the victim or his/her dependent, irrespective of his/her presence or absence. The petitioners shall be bound by the following conditions besides the conditions imposed by the learned trial court, while granting interim bail.

(i) The petitioners shall appear before the I.O. once in a week on the day and time fixed by the I.O. till the date the condition is lifted or modified or relaxed by the learned trial court;

(ii) They shall not threaten, induce or coerce the victim or any witness of the case in any manner whatsoever; and

(iii) They shall not involve themselves in similar or any other offence during the currency of the order.

27. The CRM (A) 2859 of 2023 is accordingly disposed of.

28. Department is directed to send a copy of this Judgement to learned Registrar General, who is further directed to circulate the copies of this Judgement to all the Sessions Judges of the State and to all the Special Courts dealing with offences under S.C. S.T. (P.A.) Act.

Pronounced in open Court on this day i.e. 19th day of October, 2023.

I agree.