

(2026) 03 MP CK 0840

In the Madhya Pradesh High Court, Indore Bench

Case No : Criminal Appeal No. 1910 Of 2026

Tosif Sheikh And Others

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 16-03-2026

Acts Referred:

Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 —
Section 3, 3(1)(d), 3(2)(v), 14A(2), 18
Bharatiya Nyaya Sanhita, 2023 — Section 3(5), 115, 296, 351(2)
Code Of Criminal Procedure, 1973 — Section 41, 41(1), 438

Citation : (2026) 03 MP CK 0840

Hon'ble Judges : Gajendra Singh, J

Bench : Single Bench

Advocate : Pramod C. Nair, Usha Chouhan, Shadab Khan-

Final Decision : Dismissed

Judgement

Gajendra Singh, J

1. This is first criminal appeal under section 14A(2) of the SC & ST (Prevention of Atrocities Act), 1989 is preferred by the appellants challenging the order dated 05.02.2026 by the Special Judge (SC & ST (POA) Act), 1989, Ratlam whereby application (B.A. No.2770/2026) for anticipatory bail in connection with Crime No.1286/2024 registered at Police Station- Station Road, Ratlam(MP) for the offence punishable under Sections 296, 115, 351(2), 3(5), of the BNS, 2023 and Section 3(1)(d) and 3(2)(v) of the SC & ST (Prevention of Atrocities Act), 1989 has been rejected.

2. The scope of anticipatory bail as mentioned in case of Kiran vs. Rajkumar Jivraj Jain and Anr.; 2025 INSC 1067 , Hon'ble Apex Court has laid down the parameters in relation to the applicability of Section 18 of SC/ST (POA) Act, 1989 in para no.6, 6.1 and 6.2 as below:-

"6. In light of the parameters in relation to the applicability of Section 18 of the

Act emanating from afore-discussed various decisions of this Court, the proposition could be summarised that as the provision of Section 18 of the Scheduled Caste and Scheduled Tribes, Act, 1989 with express language excludes the applicability of Section 438, Cr.PC, it creates a bar against grant of anticipatory bail in absolute terms in relations to the arrest of a person who faces specific accusations of having committed the offence under the Scheduled Caste and Scheduled Tribe Act. The benefit of anticipatory bail for such an accused is taken off. 6.1 The absolute nature of bar, however, could be read and has to be applied with a rider. In a given case where on the face of it the offence under Section 3 of the Act is found to have not been made out and that the accusations relating to the commission of such offence are devoid of prima facie merits, the Court has a room to exercise the discretion to grant anticipatory bail to the accused under Section 438 of the Code.

6.2 Non-making of prima facie case about the commission of offence is perceived to be such a situation where the Court can arrive at such a conclusion in the first blush itself or by way of the first impression upon very reading of the averments in the FIR. The contents and the allegations in the FIR would be decisive in this regard. Furthermore, in reaching a conclusion as to whether a prima facie offence is made out or not, it would not be permissible for the Court to travel into the evidentiary realm or to consider other materials, nor the Court could advert to conduct a mini trial."

7. Now, this Court is considered the facts of this case in the light of Kiran (supra). Considering the statement of victim Shailendra who belongs to the scheduled caste community recorded on 14.11.2024 it cannot be said that prima facie case is not made out against the appellants. Accordingly, no case for grant of bail to the appellant is made out, hence, criminal appeal is dismissed.

8. Now considering the remedy available to the appellants since none of the offences attract punishment more than seven years of imprisonment, the arrest can be effected only if the appellants does not cooperate in the investigation process.

9. Thus, considering the principle laid down by the Supreme Court in the case of Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273 , it is directed that in offences involving punishment upto seven years imprisonment the police may resort to the extreme step of arrest only when the same is necessary and the appellants does not cooperate in the investigation. The appellants should first be summoned to cooperate in the investigation. If the appellants cooperates in the investigation then the occasion of their arrest should not arise. For ready reference and convenience the guidelines laid down by the Supreme Court in the case of Arnesh Kumar (Supra) are enumerated below:-

"7.1. From a plain reading of the provision u/S.41 Cr.P.C., it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or

without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest

9. Another provision i.e. Section 41-A Cr.P.C. aimed to avoid unnecessary arrest or threat of arrest looming large on the accused requires to be vitalised. This provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) Cr.P.C., the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr.P.C. has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

10. In view of above and considering the principles laid down by the Apex Court in the case of Arnesh Kumar (Supra) this court without interfering in the impugned order dated 05.02.2026 passed by the Court below is inclined to direct thus:-

(i) That, the police may resort to the extreme step of arrest only when the same is necessary and the appellants fails to cooperate in the investigation

(ii) That, the appellants should first be summoned to cooperate in the investigation. If that appellants cooperates in the investigation then the occasion of their arrest should not arise

Subject to above modification in the order of the trial court dated 05.02.2026 the appeal stands disposed of.

11. A copy of this order be sent to the trial Court for necessary compliance.