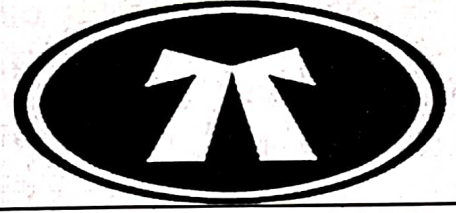


DR. B. KARTHIK NAVAYAN
Office of M.A SHAKEEL
U. D. Jai Bhima Rao, Srikanth
Chintala, Nallamasu Krishna,
Swapna Gumpula, Advocates



12/08/2023
Hyderabad

To,
THE HON'BLE CHIEF JUSTICE OF INDIA
SUPREME COURT OF INDIA TILAK MARG,
NEW DELHI-110001, EMAIL - supremecourt@nic.in

LETTER PETITION REQUESTING TO TAKE IT UP AS PUBLIC INTEREST LITIGATION SEEKING A DIRECTION FROM HON'BLE SUPREME COURT OF INDIA TO STOP ISSUING 41-A NOTICE TO THE ACCUSED WHO ALLEGEDLY COMMITTED OFFENCES UNDER SCHEDULED CASTES AND SCHEDULED TRIBES PREVENTION OF ATROCITIES ACT – 1989 AS AMENDED 2015

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1.	-	Letter Petition	12/08/2023	1-6
2.	P 1	Copy of the order of the High Court of Madhya Pradesh in Cr.A. No. 702 of 2020 directing the Police to issue 41-A CrPC Notice to the accused who allegedly committed offences under SC ST POA	27/01/2020	7-9
3.	P 2	Copy of the order of the High Court of Allahabad in Misc Case No. 22306 of 2020 directing the Police to issue 41-A CrPC Notice to the accused who allegedly committed offences under SC ST POA	25/11/2020	10-11
4.	P 3	Copy the order of the High Court of Telangana in CRLP 10674 of 2022 directing the Police to issue 41-A CrPC Notice to the accused who allegedly committed offences under SC ST POA SC ST POA	01/12/2022	12-16



Ho. No. 13- 344, Christian Colony, Opp to Block Office (MPDO office) Shadnagar, Ranga Reddy District, Telangana – 509216 Phone: 9346677007, Email: navayan@gmail.com

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5.	P4	Copy the order of the High Court of Telangana in CRLP No. 5429 of 2023 directing the Police to issue 41-A CrPC Notice to the accused who allegedly committed offences under SC ST POA SC ST POA	21/06/2023	17-20
6	P5	Copy of the circular issued by Addl Director General of Police Rajasthan	29/05/2020	21-26

Subject: Request to Direct the Home Ministries/ Police Departments of the State governments, High Courts and District Judiciary not to issue or entertain the applications for giving 41-A CRPC notice to the accused who allegedly committed offences under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (The Act herein)

Respected Hon'ble Chief Justice of India and his companion judges of the Hon'ble Supreme Court of India,

1. It is submitted that the registration of FIRs under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 has become a challenging task as the victims of the atrocities are not believed by the police administration. In some cases where the Police are forced to register the FIRs through court orders or by public pressure, the Police have entirely stopped arresting the accused and issuing the notices under Section 41-A of Cr.P.C. The accused are misusing their liberty after receiving the notices under Section 41-A Cr.P.C. to terrorise the victims and to prevent proper investigation.
2. It is submitted that the accused are approaching the various High Courts by filing Criminal Petitions under section 482/438 of Cr. P.C. The Hon'ble High Courts are passing orders directing the Police to issue notices under Section 41-A of Cr.P.C. and follow the guidelines of the Supreme Court in Arnesh Kumar Vs State of Bihar(AIR 2014 SC 2756) even in cases where there is a prima facie case against the Accused under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 were made out.



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DETAILS OF SOME OF THE ORDERS PASSED BY THE HIGH COURTS DIRECTING THE POLICE TO ISSUE 41-A CRPC TO THE ACCUSED WHO ALLEGEDLY COMMITTED OFFENCES UNDER SC AND ST (POA)

3. It is submitted that the High Court of Madhya Pradesh passed an order in Cr.A. No. 702 of 2020, dated 27/01/2020, directed the Police to issue 41-A CrPC Notice to the accused who allegedly committed offences under SC ST POA. A copy of the order is enclosed for the kind perusal of this Hon'ble Court.
4. It is submitted that the High Court of Allahabad passed an order in Misc Case No. 22306 of 2020 dated 25/11/2020 directing the Police to issue 41-A CrPC Notice to the accused who allegedly committed offences under SC ST POA. A copy of the order is enclosed for the kind perusal of this Hon'ble Court.
5. It is submitted that the High Court of Telangana in CRLP 10674 of 2022 dated 01/12/2022 passed an order directing the Police to issue 41-A CrPC Notice to the accused who allegedly committed offences under SC ST POA. A copy of the order is enclosed for the kind perusal of this Hon'ble Court.
6. It is submitted that the High Court of Telangana in CRLP no. 5429 of 2023 dated 21/06/2023 passed an order directing the Police to issue 41-A CrPC Notice to the accused who allegedly committed offences under SC ST POA. A copy of the order is enclosed for the kind perusal of this Hon'ble Court.
7. It is submitted that the High Courts pass the orders mentioned above without hearing the victims/ complainants; therefore, they are illegal, untenable and in violation of provisions of the S.C. and S.C. (PoA.) and in violation of the rights of the victims of atrocities.
8. It is submitted that in the scenario mentioned above, the Addl Director General of Police Rajasthan has issued a circular dated 25/09/2020 stating that the 41-a Cr. P.C. is not applicable for the offences under sections of SC ST POA . a Copy of the circular along with translation is enclosed for the kind perusal of this Hon'ble court.
9. It is further submitted that the decision of the Supreme Court in Arnesh Kumar Vs. The State of Bihar does not apply to the cases registered under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 as amended by SC ST(POA) Amendment Act 2015 in as much as the very object of Sections 15A (3) and 15A (5) and Section 18 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 would be defeated.



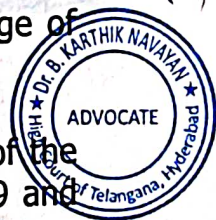
4

10. It is further submitted that the Hon'ble Supreme Court in Union of India vs State of Maharashtra (2018) did not reference the decision in Arnesh Kumar Vs. State of Bihar. On the other hand, the Hon'ble Supreme Court clearly mentioned that the bar created under Section 18 on the grant of anticipatory bail does not attract if a prima facie case is not made out attracting the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and that Section 482 Cr.P.C. can be invoked for quashing the FIR.
11. It is submitted that in many cases, the police officers are issuing notices under Section 41-A Cr.P.C. to the accused who allegedly committed offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, which is against the law and violative of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and against the spirit of the Act.
12. It is submitted that the High Courts have erred in passing the orders directing the Police to issue notices under Section 41-A Cr.P.C. in the cases registered under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.
13. It is submitted that the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 is a special enactment, and Section 41-A Cr.P.C. does not apply to the offences registered under the special enactment in as much as special Law prevails over the general Law. As such, issuing the notices under Section 41-A Cr.P.C. to the accused who allegedly committed offences under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 also violates section 18 of the Act, which bars the pre-arrest bail. Further issuing 41-A Cr.P.C. Notices without arresting the accused is equal to granting anticipatory bail, which is barred under section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.
14. It is submitted that section 18 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 reads, **"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"**.
15. It is submitted that in spite of the bar under Section 18 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 on the grant of anticipatory bail, the High Courts are entertaining applications under Section 438 Cr.P.C. even in cases where there is prima facie case against the accused made out for the offences under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.



(5)

16. It is submitted that the orders of the High Courts are against the spirit of the SC ST (POA) Act 1989 and violative of Sections 18 and 15-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. Therefore, such High Court orders are illegal and liable to be set aside.
17. It is submitted that to protect the victims and witnesses, Section 15A of the Act confers comprehensive rights and imposes obligations on the State for their protection. Section 15A (3) reads, **"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". And Section 15A(5) reads as "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"**.
18. It is submitted that Sub Sections 3 and 5 of Section 15A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 are mandatory in nature as per the decision of Supreme Court in Hariram Bambi vs Satyanarayana and another of the Supreme Court, 2021.
19. It is submitted that Section 18 of the Act states that anticipatory bail shall not be allowed to a person accused under the Act. Therefore, the non-arrest of a person charged under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, which bars anticipatory bail, makes a mockery of the provision.
20. It is submitted that Section 20 of the SC ST (POA) Act 1989 reads as, (An act to override other laws). **"—Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law"**.
21. It is submitted that Section 41-A of Cr.P.C. contradicts and weakens Section 21 of the Act, which compels the state government to take necessary measures to implement the Act effectively. Thus, giving an accused the benefit of Section 41-A renders these provisions ineffective and leads to a miscarriage of justice.
22. It is submitted that Section 41-A of Cr.P.C. defeats the very object of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and



(6)

the reasons for enacting the said Act. Preventing the application of Section 41-A Cr.P.C. does not make the arrest arbitrary and mandatory. Instead, it seeks due compliance with the conditions under Section 41 of the Cr.P.C. so that the objectives of the Act may be fulfilled. It strikes at the root of the prevalent dominance of the so-called upper caste and the consequent misuse of liberty by the persons who are alleged to have committed offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 while on bail to terrorise the victims and to prevent proper investigation.

23. It is submitted that since the Police are not arresting the accused under the Act, the accused terrorise the victims, prevent the proper investigation, and threaten them to withdraw their cases, thereby hampering the administration of justice. As the so-called upper caste people enjoy a relatively better socio-economic status, it becomes easier for an accused to abuse power. Such incidents are frequently reported.

24. It is submitted that it has become a common feature for the accused alleged to have committed offences under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 to file counter cases against the victims and to force them to withdraw the cases filed by them. The Police, under the influence of the accused persons, mostly register false cases against the victims for the offences like 354, 354-A, 354-D IPC.

Therefore, given the facts and circumstances and the settled legal position, it is prayed this Hon'ble Supreme Court of India may be pleased to Direct the Home Ministries of the State governments, High Courts and District Judiciary not to issue or entertain the applications for issuing 41-A Cr.P.C. notices to the accused alleged to have committed the offences under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 in the interest of justice and render justice.



[Handwritten Signature]
12/8/2023
Dr. B Karthik Navayan
Human Rights Activist and Advocate
High Court for the State of Telangana at Hyderabad



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Amit vs The State Of Madhya Pradesh on 27 January, 2020

Madhya Pradesh High Court

Amit vs The State Of Madhya Pradesh on 27 January, 2020

Author: Sheel Nagu

-1-

Cr.A.No.702/2020

THE HIGH COURT OF MADHYA PRADESH
Cr.A.No.702/2020
(Amit vs. The state of Madhya Pradesh and another)

Gwalior, Dated : 27/01/2020

Shri D.S. Tomar, learned counsel for appellant.

Shri Manoj Dwivedi, learned Public Prosecutor for
Respondent/State.

Learned counsel for the State submits that due intimation to the victim in accordance with Section 15A of SC & ST Act has been sent through office of the Addl. Advocate General by the State and the notice is served on the victim and yet there is no representation on behalf of the victim.

Case Diary is perused.

Learned counsel for the rival parties are heard. The present appeal u/S 14-A of SC/ST (Prevention of Atrocities) Act assails the order dated 18/12/2019 passed by Second Additional Judge to the Court of First Additional District & Sessions Judge, Ashoknagar whereby application preferred by the appellant herein u/S 438 Cr.P.C. has been rejected.

Appellant apprehends arrest in connection with offences punishable u/Ss. 323, 294, 506, 34 of IPC and Sec 3(1)(r), 3(1)(s) & 3(2)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (For brevity 'the SC/ST Act') registered as Crime No.648/2019 at Police Station Ashok Nagar, District Ashok Nagar (M.P.).

-2- Cr.A.No.702/2020 Learned Public Prosecutor for the State opposed the appeal and prayed for its rejection by contending that on the basis of the allegations and the material available on record, no case for grant of anticipatory bail is made out.

Allegation of uttering abusive words, minor injury and criminal intimidation is alleged against the appellant.

After going through the allegations in the case diary, prima facie it appears that the offence punishable u/S.3(1)(r)/(s) of the amended act is made out and thus, the statutory bar contained u/S. 18 of the SC/ST (Prevention of Atrocities) Act comes in way of appellant.

In view of above, no case is made out for grant of anticipatory bail to the appellant but since none of the offences attract punishment more than seven years of imprisonment, the arrest can be effected

Amit vs The State Of Madhya Pradesh on 27 January, 2020

only if the appellant does not cooperate in the investigation process.

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 petitioner does not cooperate in the investigation. The appellant should first be summoned to cooperate in the investigation. If the appellant cooperates in the investigation then the occasion of his arrest should

-3- Cr.A.No.702/2020 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

-4- Cr.A.No.702/2020 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.



Amit vs The State Of Madhya Pradesh on 27 January, 2020

In the recent decision of this Court in Criminal Appeal No.8795/2018 (Mangaram and anr. Vs. State of M.P.) decided on 05.12.2018 a similar view has been taken.

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 18/12/2019 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 appellant fails to cooperate in the investigation.

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

Subject to above modification in the order of the trial court dated 18/12/2019 the appeal stands disposed of.

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

C.C. As per rules (Sheel Nagu) Judge suneel SUNEEL DUBEY 2020.01.28 13:05:20 +05'30'

(10)

Sunil Yadav & Others vs State Of U.P. Thru. Secy. Home. & ... on 25 November, 2020

Allahabad High Court

Sunil Yadav & Others vs State Of U.P. Thru. Secy. Home. & ... on 25 November, 2020

Bench: Ritu Raj Awasthi, Saroj Yadav

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Court No. - 9

Case :- MISC. BENCH No. - 22306 of 2020

Petitioner :- Sunil Yadav & Others

Respondent :- State Of U.P. Thru. Secy. Home. & Others

Counsel for Petitioner :- Sachin Srivastava

Counsel for Respondent :- G.A.

Hon'ble Ritu Raj Awasthi, J.

Hon'ble Mrs. Saroj Yadav, J.

The petition seeks issuance of a writ in the nature of certiorari quashing First Information Report dated 29.10.2020 registered as FIR/Case Crime No.374 of 2020, under Sections 34, 323, 352, 452, 504 IPC & Section 3 (1) (Da), 3 (1) (Dha) & 3 (2) (V) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act, 1989, related to P.S.Mandhata, District Pratapgarh.

We have heard learned counsel for the petitioner(s) and learned counsel for the State and have gone through the contents of the impugned First Information Report. Petitioner(s) are entitled for the benefit of Section 41A Cr.P.C.

Learned counsel appearing for the State states that the offence(s) allegedly committed entail a sentence up to seven years. In such circumstances, the investigating officer shall ensure compliance of provisions of Section 41 and Section 41-A of the Code of Criminal Procedure as provided by Hon'ble Supreme Court of India in Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273.

We have considered the stand of learned counsel for the State. In Arnesh Kumar's case (supra) the following (relevant portion) has been held:-

(11)

Sunil Yadav & Others vs State Of U.P. Thru. Secy. Home. & ... on 25 November, 2020

"9. Another provision i.e. Section 41A Cr.PC aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalised. Section 41A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008(Act 5 of 2009), which is relevant in the context reads as follows:

"41A. Notice of appearance before police officer.-

(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice."

"The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1), Cr.PC, 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 office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr.PC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid." (emphasized by us) Considering the stand taken by learned counsel for the State in context of judgment rendered by the Hon'ble Supreme Court of India in Arnesh Kumar's case (supra), relevant portion from which has been extracted above, this petition is disposed of in view of the provisions of Section 41-A Cr.P.C. and the law as laid down by Apex Court in the case of Arnesh Kumar (supra).

Order Date :- 25.11.2020 Ram.

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IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THURSDAY THE FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO: 10674 OF 2022

Between:

1. Mukkera Nagaraju, S/o. Mukkera Swami, Occ: Principal, TS. Model School Aged 37 years, R/o. D.No. 2-3/1, Chinthakani Village, Kataram Mandal, Chinthakani, Karimnagar
2. Namballa Sulochana, W/o. D. Simhachalam, Occ: Teacher, T.S. Model School Aged 41 years, R/o. D. No. 13-27/A, Garepalli, Opp. Andhra Bank, Kataram Mandal, Karimnagar District.
3. Illendula Prabhakar, S/o. I. Venkatanarsaiah, Occ: Vice Principal, T.S. Model School
...PETITIONER/ACCUSED A1 TO A3

AND

1. The State of Telangana and another, rep. by its Public Prosecutor, High Court Buildings, State of Telangana, Hyderabad Through Station House Officer, Adavi Mutharam Police Station, Jayashankar Bhupalpally District.
2. Jarupula Kranthi, S/o. Raju Nayak, Occ: Helper, T.S. Model School Aged 43 years, R/o. Mahamutharam Village, Mahadevpur Mandal, Bhupalapally District
...RESPONDENT/ DEFACTO COMPLAINANT

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to Quash the FIR No. 107 of 2022 on the file of Adavi Mutharam Police Station, Jayashankar Bhupalpally District., dated 11.11.2022.

I.A. NO: 2 OF 2022

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay of all further proceedings including arrest of the petitioners in FIR No. 107 of 2022 on the file of Adavi Mutharam Police Station, Jayashankar Bhupalpally District., dated 11.11.2022 pending disposal of the main Criminal Petition, in the interest of justice.

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This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri G. TUHIN KUMAR, Advocate for the Petitioner and the Additional Public Prosecutor on behalf of the Respondent No.1.

The Court made the following: ORDER

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1

Cri.Petition No.10674 of 2022

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.10674 OF 2022

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') by the petitioners – Accused Nos.1 to 3 to quash the proceedings against them in FIR No.107 of 2022 pending on the file of Station House Officer, Adavi Mutharam Police Station, Jayashankar-Bhupalpally District, registered for the offences punishable under Section 306 read with Section 34 of Indian Penal Code (for short "IPC") and Section 3(1)(r)(s) and 3(2)(v) of SC/ST (POA) Act.

2. Heard learned counsel for the petitioners – Accused Nos.1 to 3 and learned Additional Public Prosecutor for the respondent – State. Perused the material on record.
3. The petitioners are Principal, Vice Principal and Teacher of TS Model School at Karimnagar.
4. Briefly the facts of the case are that the husband of the 2nd respondent – *de facto* complainant was attending the school works,

(15)²

however, these petitioners have restrained her husband from entering into the school premises and also asked her not to cook food. It is alleged that aggrieved by the said acts of restraining the husband of the *de facto* complainant, he committed suicide.

5. *Prima facie* restraining a person from entering into the school premises in the capacity of principal, vice principal and teacher, will not amount to abetting suicide, for which reason, this Court deems this appropriate to direct the Investigating Officer in FIR No.107 of 2022 pending on the file of Station House Officer, Adavi Mutharam Police Station, Jayashankar-Bhupalpally District, to conclude the investigation without taking any coercive steps against the petitioner -- Accused. Further, the petitioners -- Accused Nos.1 to 3 shall co-operate with the Investigating Officer as and when required for the purpose of investigation.

6. Accordingly, the Criminal Petition is disposed off.

Miscellaneous applications pending, if any, shall stand closed.

SD/-T.JAYASREE
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Station House Officer, Adavi Mutharam Police Station, Jayashankar Bhupalpally.
2. Two CCs to the Public Prosecutor, High Court for the State of Telangana, at Hyderabad (OUT).
3. One CC to Sri G. TUHIN KUMAR, Advocate [OPUC]
4. Two CD Copies

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HIGH COURT

KS,J

DATED:01/12/2022



ORDER

CRLP.No.10674 of 2022

CRIMINAL PETITION IS DISPOSED OFF

7 copies

Sm
4/01/2023

(17)

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**WEDNESDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SMT JUSTICE G.ANUPAMA CHAKRAVARTHY

CRIMINAL PETITION NO: 5429 OF 2023

Between:

1. Alipireddy Srinivas, S/o Venkatnarsaiah, Age: 48 years, Caste: Medari, (BC)
Occ: Decoration Works R/o Subhash Nagar Karimnagar Karimnagar Dist
2. Alipireddy Anjali, W/o Srinivas Madari Age: 46 years, Caste: Medari, (BC), R/o
Subhash Nagar, Karimnagar Karimnagar Dist

...PETITIONERS/ACCUSED 1 & 2

AND

1. The State of Telangana, Rep. by its P.P., High Court for the state of
Telangana, Through SHO III Town Police Station, Karimnagar Karimnagar
Dist
2. Chandamalla Rajkumar, S/o Rajaiah, Age: 48 years, Occ: Driver R/o Road No
10, Subhash nagar Karimnagar Karimnagar Dsit

...RESPONDENTS/COMPLAINANT

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash the FIR Cr.No. 149/2023 on the file of the PS III Town Karimnagar Karimnagar District.

I.A. NO: 1 OF 2023

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay all further proceedings in Cr.No. 149/2023 of III Town PS, Karimnagar Karimnagar District including arrest of the petitioners pending disposal of the Criminal Petition.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri M.RAM MOHAN REDDY, Advocate for the Petitioner and Sri S. GANESH, Assistant Public Prosecutor on behalf of the Respondent No. 1 and none appeared for the Respondent No. 2

The Court made the following: ORDER

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HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

CRIMINAL PETITION No.5429 of 2023

ORDER:

This Criminal Petition is filed under Section 482 of Cr.P.C. by the petitioners-accused Nos.1 and 2 to quash the proceedings in Crime No.149 of 2023 on the file of III Town Police Station Karimnagar, Karimnagar district for the offences under Sections 324, 506, 323 r/w 34 of IPC and SC/ST's (POA) Act, 2015.

2. Heard learned counsel for the petitioners-accused Nos.1 and 2 and Sri S.Ganesh, learned Assistant Public Prosecutor for respondent No.1 – State.
3. On perusal of the record, since the punishment prescribed for the offences alleged against the petitioners is less than seven years, this Court deems it appropriate to direct the petitioners to appear before the Police concerned on 27.06.2023. The Investigating Officer in respect of Crime No.149 of 2023 on the file of III Town Police Station Karimnagar, Karimnagar district, shall follow the procedure laid down under Section 41-A Cr.P.C and also the guidelines formulated by the Hon'ble Supreme Court in *Arnesh*

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*Kumar v. State of Bihar*¹scrupulously. However, the petitioners shall co-operate with the Investigating Officer as and when required by furnishing information and documents as sought by them in concluding the investigation.

4. Accordingly, the Criminal Petition is disposed of.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

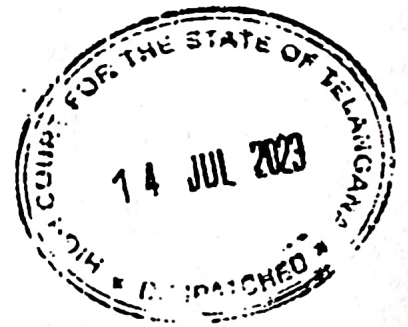
Date: 21.06.2023
Lk/plp

¹ (2014) 8 SCC 273

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HIGH COURT

DATED:21/06/2023



ORDER

CRLP.No.5429 of 2023

DISPOSING OFF THE CRIMINAL PETITION.

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1/7/23

(21)

कार्यालय अति. महानिदेशक पुलिस, सिविल राईट्स एवं एन्टी ह्यूमन ट्रेफिकिंग,
राजस्थान, जयपुर।

क्रमांक:-प-1(21)सीवी/सीआरसी/परिपत्र/1891-13 दिनांक: 29.5.2020

समस्त महानिरीक्षक पुलिस, रेंज/
पुलिस आयुक्त, जयपुर/जोधपुर एवं
समस्त जिला पुलिस अधीक्षक/उपायुक्त,
राजस्थान मय जी.आर.पी., अजमेर/जोधपुर।

परिपत्र

राज्य में अनुसूचित जाति/अनु० जनजाति के सदस्यों पर अत्याचार की घटनाओं पर नियंत्रण तथा अपराधियों पर दण्ड प्रक्रिया लागू करने हेतु पी.सी.आर. एक्ट 1955, अनुसूचित जाति/अनु० जनजाति (अत्याचार निवारण) अधिनियम 1989 यथा संशोधित 2015 व 2018 तथा अनुसूचित जाति/अनु० जनजाति नियम 1995 का प्रभावी क्रियान्वन करने हेतु समय-समय पर परिपत्र जारी कर निर्देशित किया गया है। माननीय उच्चतम न्यायालय द्वारा क्रिमिनल अपील संख्या 1277/14 अर्नेश कुमार बनाम बिहार राज्य में यह दिशा-निर्देश जारी किये हैं कि "7 वर्ष या 7 वर्ष से कम जुर्माना सहित या रहित सजा में दण्डनीय संज्ञेय अपराध में आरोपी को गिरफ्तार नहीं करेंगे" तथा धारा 41(1)(बी), द०प्र०स० के अनुसार भी 7 वर्ष तक की सजा वाले दण्डनीय अपराधों में जब तक आवश्यकता न हो गिरफ्तारी नहीं की जावेगी, का प्रावधान है। अनुसूचित जाति/अनु० जनजाति (अत्याचार निवारण) अधिनियम के तहत दर्ज प्रकरणों की पत्रावलियां समय-समय पर तलब कर समीक्षा करवाने पर तथा जिलों से जानकारी करने पर यह सामने आया है कि अधिकांश प्रकरणों में आरोपियों के विरुद्ध जुर्म प्रमाणित पाये जाने पर उन्हें द०प्र०स० की धारा 41(ए) का लाभ दिया जा रहा है जो अनुसूचित जाति/अनुसूचित जनजाति(अत्याचार निवारण) अधिनियम की भावना के विपरीत है तथा कमजोर वर्गों के हितों पर कुठाराघात है। अनुसूचित जाति/अनु० जनजाति (अत्याचार निवारण) अधिनियम तथा द०प्र०स० में निम्नांकित प्रावधान है :-

1. अनुसूचित जाति/अनुसूचित जन जाति (अत्याचार निवारण) अधिनियम 1989 यथा संशोधित अधिनियम 2015 की धारा 18- अधिनियम के अधीन अपराध करने वाले व्यक्तियों को संहिता की धारा 438 का लागू न होना- संहिता की धारा 438 की कोई बात इस अधिनियम के अधीन कोई अपराध करने के अभियोग पर किसी व्यक्ति को गिरफ्तारी के किसी मामले के संबंध में लागू नहीं होगी अर्थात् अधिनियम की इस धारा के तहत अपराधी को अग्रिम जमानत का लाभ प्राप्त करने का अधिकार समाप्त हो जाता है।

2. अनुसूचित जाति/अनुसूचित जन जाति (अत्याचार निवारण) अधिनियम 1989 यथा संशोधित अधिनियम 2018 की धारा 18क- किसी जांच या अनुमोदन का आवश्यक न होना -
- (1) इस अधिनियम के प्रयोजनों के लिए-
- (क) किसी ऐसे व्यक्ति के विरुद्ध प्रथम इत्तला रिपोर्ट के रजिस्ट्रेशन के लिए किसी प्रारम्भिक जांच की आवश्यकता नहीं होगी या
- (ख) किसी ऐसे व्यक्ति की गिरफ्तारी, यदि आवश्यक हो, से पूर्व अन्वेषक अधिकारी को किसी अनुमोदन की आवश्यकता नहीं होगी,
- जिसके विरुद्ध इस अधिनियम के अधीन किसी अपराध के किए जाने का अभियोग लगाया गया है और इस अधिनियम या संहिता के अधीन उपबंधित प्रक्रिया से भिन्न कोई प्रक्रिया लागू नहीं होगी।
- (2) किसी न्यायालय के किसी निर्णय या आदेश या निर्देश के होते हुए भी संहिता की धारा 438 के उपबंध इस अधिनियम के अधीन किसी मामले को लागू नहीं होंगे।
3. अनुसूचित जाति/अनुसूचित जन जाति (अत्याचार निवारण) अधिनियम 1989 यथा संशोधित अधिनियम 2015 की धारा 20- अधिनियम का अन्य विधियों पर अध्यारोही होना- इस अधिनियम में जैसा अन्यथा उपबंधित है उसके, सिवाय, इस अधिनियम के उपबंध, तत्समय प्रवृत्त किसी अन्य विधि या किसी रूढ़ी या प्रथा या किसी अन्य विधि के आधार पर प्रभाव रखने वाली किसी लिखित में उससे असंगत किसी बात के होते हुए भी, प्रभावी होंगे अर्थात् इस धारा के अनुसार इस अधिनियम के उपबन्ध अन्य विधियों पर अध्यारोही (Act to override other laws) होंगे तथा तत्समय प्रवृत्त किसी अन्य विधि या किसी रूढ़ी या प्रथा या किसी अन्य विधि के आधार पर प्रभाव रखने वाले किसी लिखित में उससे असंगत किसी बात के होते हुये भी प्रभावी होंगे।
4. अनुसूचित जाति/अनुसूचित जन जाति (अत्याचार निवारण) अधिनियम 1989 यथा संशोधित अधिनियम 2018 धारा 15(क)(3)-किसी पीड़ित या उसके आश्रित को, किसी न्यायालय की कार्यवाही की युक्तियुक्त, यथार्थ और समय से सूचना का अधिकार होगा जिसमें जमानत प्रक्रिया सम्मिलित है और विशेष लोक अभियोजक या राज्य सरकार पीड़ित को इस अधिनियम के अधीन किन्हीं कार्यवाहियों के बारे में सूचित करेगी अर्थात् इस धारा के अनुसार जमानत की प्रक्रिया में प्रार्थी व लोक अभियोजक को न्यायालय द्वारा सुना जाना कानूनन आवश्यक है। धारा 41(1)(बी) द0प्र0स0 के प्रावधानों की पालना करने से इस धारा की पालना नहीं हो पायेगी।
5. दण्ड प्रक्रिया संहिता की धारा 5- "व्यावृत्ति" - इससे प्रतिकूल किसी विनिर्दिष्ट उपबन्ध के अभाव में इस संहिता की कोई बात तत्समय प्रवृत्त किसी विशेष या

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स्थानीय विधि पर या तत्समय प्रवृत्त किसी अन्य विधि द्वारा प्रदत्त किसी विशेष अधिकारिता या शक्ति या उस विधि द्वारा विहित किसी विशेष प्रक्रिया पर प्रभाव नहीं डालेगी अर्थात् इस धारा के तहत विशेष अधिनियमों पर इस संहिता का प्रभाव तब तक नहीं पड़ेगा जब तक कि उसमें इस बाबत कोई उपबन्ध नहीं हो।

6. माननीय सर्वोच्च न्यायालय द्वारा भी दिनांक 01 अक्टूबर 2019 को दिए गए निर्णय में अनुसूचित जाति/ अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम 1989 यथा संशोधित अधिनियम 2018 की धारा 18ए में वर्णित प्रावधानों को सही माना है। अनुसूचित जाति/ अनुसूचित जन जाति (अत्याचार निवारण) संशोधित अधिनियम 1989 यथा संशोधित अधिनियम 2018 में भारत सरकार द्वारा धारा 18ए जोड़ी जाकर राजपत्र में प्रकाशित की गई है।

अनुसूचित जाति/ अनुसूचित जन जाति (अत्याचार निवारण) अधिनियम 1989 यथा संशोधित अधिनियम 2018 के प्रावधानों धारा 18 व 18ए में जब इस अधिनियम के तहत आरोपित व्यक्ति को अग्रिम जमानत का अधिकार ही प्राप्त नहीं है ऐसी स्थिति में द0प्र0स0 की धारा 41(ए) के प्रावधान को लागू करके अपराधी को गिरफ्तार नहीं किया जाकर अधिकांश प्रकरणों में नोटिस देकर ही चालान प्रस्तुत किये जाने की सम्भावना है जो अनुसूचित जाति/ अनुसूचित जन जाति (अत्याचार निवारण) अधिनियम की मूल भावना के विपरीत प्रक्रिया होगी। इसी प्रकार द0प्र0स0 की धारा 5 से भी स्पष्ट है कि संहिता के प्रावधान इस अधिनियम पर अध्यारोपित नहीं होंगे।

अतः अनुसूचित जाति/ अनुसूचित जन जाति (अत्याचार निवारण) अधिनियम के प्रकरणों में अभियुक्त को द0प्र0स0 की धारा 41(ए) के प्रावधानों का लाभ नहीं दिया जाये। उक्त आदेश की पालना अपने अधीनस्थ से सुनिश्चित करावें।

29/05/20

(डॉ. रवि प्रकाश मेहरडा)

अति. महानिदेशक पुलिस,

सिविल राईट्स एवं एन्टी ह्यूमन ट्रेफिकिंग,
राजस्थान, जयपुर।

प्रतिलिपि:- निम्नांकित को सूचनार्थ प्रेषित है:-

1. अति0 महानिदेशक पुलिस, अपराध, राजस्थान, जयपुर।
2. उप महानिरीक्षक पुलिस, कार्मिक, राजस्थान, जयपुर।

29/05/20

अति. महानिदेशक पुलिस,

सिविल राईट्स एवं एन्टी ह्यूमन ट्रेफिकिंग,
राजस्थान, जयपुर।

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// TRANSLATION FROM HINDI (FROM XEROX COPY) //

**OFFICE ADDL. DIRECTOR GENERAL OF POLICE, CIVIL RIGHTS AND
ANTI HUMAN TRAFFICKING, RAJASTHAN, JAIPUR.**

Number:- P-1(21)CB/CRC/Circular/1821-63

Dated: 29-5-2020

All Inspector General of Police, Range /
Commissioner of Police, Jaipur / Jodhpur and
All District Superintendents of Police / Deputy Commissioners,
Rajasthan May GRP, Ajmer / Jodhpur.

CIRCULAR

PCR to control incidents of atrocities on SC/ST members in the state and to enforce punishment on criminals for effective implementation of Act 1955, Scheduled Castes/ Scheduled Tribes (Prevention of Atrocities) Act 1989 as amended in 2015 and 2018 and Scheduled Castes/Scheduled Tribes Rules 1995, circulars have been issued from time to time. Hon'ble Supreme Court in Criminal Appeal No.1277/14, Armesh Kumar Vs. State of Bihar has issued guidelines that "shall not arrest an accused in a cognizable offense punishable with or without fine for 7 years or less than 7 years" and Section 41 (1) (b), according to the D.P.S., there is also a provision that in offenses punishable with imprisonment up to 7 years, arrest will not be made unless necessary. After calling the files of the cases registered under Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act and getting them reviewed from time to time, and after getting information from the Districts, it has come to light that in most of the cases, if the crime against the accused is found proved, they will be punished by the D.P.S. the benefit of Section 41(A) is being given which is contrary to the spirit of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act and is an affront to the interests of the weaker sections. The Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act and D.P.S. have the following provisions: -

- 1. Section 18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act 1989 as amended in 2015 - Non-applicability of section 438 of the Code to persons who have committed offenses under the Act - Nothing contained in section 438 of the Code shall apply in relation to any case of arrest of any person accused of having committed an offense under this Act, that is to say, the right of the offender to obtain the benefit of anticipatory bail under this section of the Act shall cease.**

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2. Section 18A of the Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act 1989 as amended Act 208 - No investigation or approval required -

- (1) For the purposes of this Act—
 - (a) No preliminary inquiry shall be required for the registration of the First Information Report against any such person, or
 - (b) No approval shall be required of the Investigating Officer before the arrest, if necessary, of any such person,
Against whom an accusation of the commission of an offense under this Act is made and no procedure other than that provided under this Act or the Code shall apply.
- (2) Notwithstanding any judgment or order or direction of any court, the provisions of section 438 of the Code shall not apply to any case under this Act.

3. Section 20 of the Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act 1989 as amended Act 2015 - Act to be overriding on other laws:- Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any other law That is, according to this section, the provisions of this (Act shall override other laws) and shall be deemed to be inconsistent with any other law for the time being in force or any custom or usage or any instrument holding charge on the basis of any other law will be effective even after being there.

4. Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act 1989 as Amended Act 2018 Section 14 (a) (3) - A victim or his dependent shall have the right to reasonable, accurate and timely information of the proceedings of any court including bail proceedings and the Special Public Prosecutor or the State Government shall inform the victim of any proceedings under this Act, that is to say, this section according to the law, it is necessary for the applicant and the Public Prosecutor to be heard by the court in the process of bail. Compliance with the provisions of Section 41 (1) (b) of the D.P.S. will not comply with this section.

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5. **Section 5 of the Code of Criminal Procedure - "Tendency"** -Nothing in this Code shall, in the absence of any specific provision to the contrary, affect any special or local law for the time being in force or any special jurisdiction or power conferred by any other law for the time being in force or any special procedure prescribed by that law, namely:- Special Acts under this Code shall not be affected unless there is a provision in that behalf.

6. In the decision given by the Hon'ble Supreme Court on October 01, 2019, the provisions mentioned in Section 18A of the Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act 1989 as amended in 2018 have been considered correct. The Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Amended Act 1989 as amended in 2018 has been published in the Gazette by the Government of India adding section 18A.

Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act 1989 as amended in 2018 in the provisions of Section 18 and 18A, when the person accused under this Act does not have the right to anticipatory bail, in such a situation under Section 41(A) of the By implementing the provision, instead of arresting the culprit, there is a possibility of presenting the challan only after giving notice in most of the cases, which would be contrary to the basic spirit of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. Similarly, it is also clear from Section 5 of the DPS that the provisions of the Code will not be superimposed on this Act.

Therefore, in the cases of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, the accused should not be given the benefit of the provisions of Section 41(A) of D.P.S. Ensure compliance of the above order from your subordinate.

Sign.29/05/20
(Dr.Ravi Prakash Mehrado)
Addl. Director General of Police,
Civil Rights and Anti Human Trafficking,
Rajasthan, Jaipur

Copy:- forwarded to the following for information:-

1. Additional Director General of Police, Crime, Rajasthan, Jaipur.
2. Deputy Inspector General of Police, Personnel, Rajasthan, Jaipur.

Sign.29/05/20
Addl. Director General of Police,
Civil Rights and Anti Human Trafficking,
Rajasthan, Jaipur

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// WITHOUT PREJUDICE //