

KAUP300000052026



**IN THE COURT OF I ADDITIONAL DISTRICT AND
SESSIONS JUDGE, UDUPI (SITTING AT KUNDAPURA)**

DATED THIS THE 08th DAY OF JANUARY, 2026

PRESENT:

**Sri Abdul Rahim Hussain Shaikh,
B.Sc., B.Ed., LL.B.(Spl.)
I Addl. District and Sessions Judge,
Udupi (sitting at Kundapura)**

CRL.MISC. No.504/2026

Petitioners	1. Geetha, 42 years W/o Nagaraj Poojary, 2. Meenakshi, 34 years, W/o Sudhir Poojary, Both are residing at 1/33, Shreedevi Nilaya, Hosabettu, Uppinakudru, Kundapura. (By Sri/Smt: Praveen Poojary, Advocate)
	//Vs//
Respondents	1. State by Kundapura police station. (By the learned Public Prosecutor) 2. Laxmi. W/o Babu, R/o Hosabettu, Uppinakudru Village. (In person)



**ORDER ON BAIL PETITION FILED U/S.482 OF THE
BHARATIYA NAGARIK SURAKSHA SANHITA 2023**

The Advocate for the petitioners have filed bail petition U/s.482 of The Bharatiya Nagarik Suraksha Sanhita 2023, to grant anticipatory bail in favour of the petitioners and also direct the respondent police to release them on bail in the event of their arrest in Crime No.149/2025 in the interest of justice.

2. On perusal of the bail petition reveals that based on the complaint of Laxmi, the respondent police have registered case in Crime No.149/2025 against the petitioners for an offences punishable U/s.126(2), 352, 351(2) R/w 3(5) of The Bharatiya Nyaya Sanhita 2023 and Section 3(1)(r)(s), 3(2)(va) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. The petitioners being accused persons apprehending their arrest at the hands of respondent police. Therefore, the petitioners have constrained to file this petition to grant bail.

3. The learned Public Prosecutor has filed objection in detail by reiterating the contents of the complaint and contended that this bail petition is not maintainable in law or on facts of the case. Further contended that the investigation is still under progress. It is further contended that the caste certificates of the accused and



complainant yet to be collected. It is further contended that if petitioners are granted bail, then the accused Nos.1 and 2/petitioners will again involve in causing harassment to the complainant and would not be available for investigation. It is further contended that there is no justifiable grounds for grant of bail to the petitioners since the petitioners have committed the cognizable and non-bailable offences. It is further contended that the petitioners have committed the offences against member of an scheduled caste and scheduled tribes. The petition under Section 438 of Cr.P.C. is not maintainable in view of Section 18A(2) of The Scheduled Caste and The Scheduled Tribes (Prevention of Atrocities) Act while the investigation is in progress. Accordingly, prayed for rejection of bail petition.

4. In pursuance of notice, the complainant/respondent No.2 appeared before the Court and filed his objections contending that the accused persons abused her in filthy language by defaming her caste and threaten for her life. Hence prays to dismiss the application.

5. Heard the arguments on both sides and perused the materials on record.



6. The following points that arises for consideration of this Court:

1. Whether the petition filed under Section 438 of Cr.P.C. is maintainable?
2. *Whether the petitioners have made out sufficient grounds for granting anticipatory bail in their favour in Cr.No.149/2025 of Kundapura P.S., at this stage as sought for?*
3. *What order?*

7. This court has answered the above points are as under:-

*Point No.1: In the Affirmative
Point No.2 : In the Affirmative
Point No.3: As per final order
for the following:-*

REASONS

8. **Point Nos.1 and 2:** On perusal of the documents, placed before the Court, it reveals that based on the complaint that has been lodged by the complainant- Laxmi, respondent police have registered case against the petitioners in Crime No.149/2025 for the offences punishable U/s.126(2), 352, 351(2) R/w 3(5) of The Bharatiya Nyaya Sanhita 2023 and Section 3(1)(r) (s), 3(2)(va) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.



9. It is the case of the complainant that she belonged to Scheduled Caste and member of the Talluru Village Panchayath. It is further case of the complainant that on 22/12/2025 at about 4.00 p.m., when the complainant was proceeded to the ration shop at Uppinakudru, the accused persons abused her in filthy language by defaming her caste and threaten for her life. Accordingly, complainant has lodged the complaint against the petitioners- accused Nos.1 and 2 before respondent police.

10. The contentions of petitioners are that there is no prima facie case against the accused persons and they has been falsely implicated in this case. It is further contended that the petitioners having family and small children, if the bail has not granted the family also suffered from irreparable loss and damage. It is further contended that the allegation made against them is in civil nature since the petitioners had filed several complainants against various problems to the panchayath and the complainant being the panchayath member with the intention to stop the petitioners from filing petition had made false allegations. It is further contended that they undertaken to offer substantial surety on their appearance and undertaken to abide by any conditions which this Court may impose for their release on bail. On the contrary, the prosecution has



submitted that unless a full-fledged trial is completed, the accused persons/petitioners cannot be considered as innocent at this point of time. Further it is contended by the prosecution that the present application under Section 438 of Cr.P.C. is not maintainable in view of the provisions of Section Section 18A(2) of The Scheduled Caste and The Scheduled Tribes (Prevention of Atrocities) Act while the investigation is in progress.

11. At this juncture, before proceeding with merits of the case, it is just a necessary to consider maintainability of petition under Section 438 of Cr.P.C. In view of Section 18, 18A of The Scheduled Caste and The Scheduled Tribes (Prevention of Atrocities) Act as contended by the prosecution.

12. I would like to reproduce Section 18 of The Scheduled Caste and The Scheduled Tribes (Prevention of Atrocities) Act speaks, “**Section 438 of the Code do not apply to the 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.**”.

13. Section 18A of The Scheduled Caste and The Scheduled Tribes (Prevention of Atrocities) Act speaks ,



“No enquiry or approval required -

(1) for the purpose of this Act:-

(a) preliminary enquiry shall not be required for registration of a F.I.R. against any person; or

(b) the Investigating Officer shall not require approval for the arrest, if necessary of, any person against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

(2) The provisions of Section 438 of Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court”.

*Section 18-A of the Act came to be inserted by the Act 27 of 2018 with effect from 20-08-2018. It is very pertinent to go through the dictum of law laid down by the Hon'ble Supreme Court in considering the applicability of Section 18A(2) of the Act for the purpose of grant of anticipatory bail under Section 438 of Cr.P.C. in the case of **Prathvi Raj Chauhan Vs Union of India and others (W.P. No.1015/2018)**. In the said Judgment, the Hon'ble Supreme Court has held that :*

(c) Code of Criminal Procedure, 1973-Section 438- Criminal Procedure-Prosecution u/Atrocity Act-Anticipatory Bail-Bar u/Section 18 and 18-A of Atoricity Act-



Applicability-Section 438 Cr.P.C. shall not apply to the cases under Act of 1989- However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by Section 18 and 18-A (I) shall not apply-This aspect has been clarified in Review Petitions-Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1980-Sections 18 & Section 18-A.

From this, it is crystal clear that though a bar is created for entertaining the petition under Section 438 of Cr.P.C. for the offences registered under the provisions of The Scheduled Caste and The Scheduled Tribes (Prevention of Atrocities) Act, 1989, but if prima facie there is no material for attracting the provisions of the Act or complaint filed with an malafide intention and a case has been registered, the bar created under Section 18 and Section 18A (2) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 shall not apply.

14. It is vehemently argued by the petitioner's counsel that there is a serious dispute between the petitioners and the Panchayath regarding water supply and formation of roads to the public at large. Further it is



argued that the complainant is the Panchayath member and in order to stop the petitioners from filing application to the Panchayath questioning the development, filed the present complaint by misusing that she being the member of schedule caste and tribe. In order to support, the petitioners have produced applications filed by 2nd petitioner before Lokayuktha, Tahsildar, Deputy Commissioner disclosing that many applications on different dates have been filed against the panchayath. All these documents clearly discloses that the Petitioner No.2 has filed various applications before different authorities regarding the activities of Uppinakudru Gram Panchayath, in which the present complainant is the member. It is the contention of the petitioners that in order to suppress her voice, the present complaint has been filed against the petitioners under Atrocity Act through the complainant. It is equally important to note that the facts can be ascertained only after full fledged trial and the foremost fact to be established is whether the adjudication between the parties is resulting in caste base discrimination. At this juncture, the custodial interrogation of accused persons are not at all required and same is not sought by the police.

15. At this juncture, I would like to refer the reported case in **Mohan Singh and Satpal (2014) 5 Law Herald 3971 dated 29-09-2014**, where the Hon'ble



Punjab and Haryana High Court held that Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In the instant case, there is a serious dispute between the petitioners and the Panchayath regarding water supply and formation of roads to the public at large. At this juncture prima facie, on perusal of the materials produced before the Court it cannot be considered that the petitioners have defamed the caste of the complainant and it is caste based discrimination.

16. At this juncture, I would like to refer to the ruling reported in **2020 Legal Eagle (SC)660 between Hitesh Verma Vs State of Uttarakhand and another** and contended that Section 18 of the Act can be only invoked to bar an application under Section 438 of Cr.P.C. where the offence was the outcome of the caste discrimination.

17. I would also like to refer the citation reported in **R/Criminal Appeal No.1625/21 between Chaudhary Pravinbhai Revabhai Vs State of Gujarat**. In the said ruling, the Hon'ble High Court of Gujarat held that if from the records produced before the Court prima facie



no averments of allegation made by the petitioner attracting any provisions of Atrocity Act, they are entitled for bail u/s 438 of Cr.P.C.

18. I Would also like to refer the citation reported in **2018 Legal Eagle 192 between Subhash Kashinath Mahajan Vs State of Maharashtra**, wherein the Hon'ble Supreme Court held that :

“Exclusion of right of anticipatory bail is applicable only if the case is shown to bonafide and that prima facie it falls under the Atrocities Act and not otherwise-Here is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie malafide-arrest in cases under the Atrocities Act.”

Perused the said rulings and also the contention of the petitioners that there exists no prima facie case to show that caste discrimination was not motive for the crime and power of Section 438 of Cr.P.C. can be exercised to grant anticipatory bail. The said argument and ruling cited is aptly applicable to the present facts and circumstances of the case since from the materials produced before the Court prima facie it appears that



the petitioners/accused No.1 and 2 and the complainant are in dispute regarding the activity of Uppinakudru Grama Panchayath in providing relief to the public at large under Government Food scheme. The entire facts can be ascertained only after full-fledged trial. Under these circumstances, I deem it appropriate and fit case to grant the anticipatory bail to the petitioners.

19. At this juncture, I would also like to rely on case law **2018 AIR (SC) 1498**, wherein the Hon'ble Supreme Court of India had laid down the dictum of law that there is no blanket bar or restriction for entertaining the petition filed under Section 438 of Cr.P.C. in relation to the provisions of Section 3 of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 when the cases on hand before Court if no prima facie case is made out or where on judicial scrutiny, the complaint is found to be prima facie malafide.

The said fact has been reiterated by the Hon'ble Supreme Court in the judgment reported in **2024 CrL.L.J 4537 : AIR Online 2024 SC 588 in between Shajan Skaria Vs state of Kerala and another** and clearly held that if the offence alleged is not due to outcome of caste discrimination then the accused is entitled for bail under Section 438 of Cr.P.C.



20. In view of the decisions referred above and dictum of law laid down therein, this Court holds that even Section 18A of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 the Court is not barred from entertaining the petition filed under Section 438 of Cr.P.C. when prima facie material discloses that the incident was not outcome of caste based discrimination. Further it is found that no prima facie case for attracting the provisions of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 or prima facie it is malafide one, the Court can entertain the petition under Section 438 of Cr.P.C. even though for the offences alleged under the provisions of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989. By considering the above aspects, the claim of the petitioner are considered.

21. Apart from this, as it is mandatory to give an opportunity to the victim or dependents of the victim of being heard in the matter of bail, trial of the case, notice has been issued to the complainant/victim/respondent No.2, who appeared before the Court and filed objections. From the objections of the respondent Nos.1 and 2, it is found that the complainant has filed the complaint against the petitioners alleging that the petitioners have committed atrocity on her, by abusing in a filthy words



on her caste. The entire fact can be ascertained only after full fledged trial. Mere mentioning of provisions of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 in the F.I.R. itself is not sufficient to hold that the petition is not maintainable as the offences alleged are in respect of Section 3 of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989.

22. It is pertinent to note that even for the sake of argument, it is accepted that there is prima facie case against the petitioners for the offences punishable U/s.126(2), 352, 351(2) R/w 3(5) of The Bharatiya Nyaya Sanhita 2023 and Section 3(1)(r)(s), 3(2)(va) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, even though the offences are not punishable with death or imprisonment for life, the offence under Sections 3(1)(r)(s), 3(2)(va) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, are non-bailable and exclusively triable by the Special Court.

23. However, it is well settled principle of law that the granting of bail is discretionary power of the Court and every case should be considered on the basis of facts of each case. At this juncture, I would like to quote the dictum of law laid down in the decision report in **(2011) 1**



Supreme Court cases 694 (Siddharam Satlingappa Mhetre Vs., State of Maharashtra and others) wherein the Hon'ble Supreme Court has held that :-

“Sec.438 of Cr.P.C., is not extraordinary in the sense that it should be invoked only exceptional or rare cases – A great ignominy, humiliation and disgrace is attached to arrest – In cases where Court is of considered view that accused has joined investigation and he is fully co-operating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided, and anticipatory bail should be granted – exercise of said jurisdiction requires maintaining of perfect balance between two conflicting interests viz., sanctity or individual liberty and interest of society.”

And also the dictum of law and guidelines laid down by the **Hon'ble Supreme Court of India in Gurbaksh Singh Sibbia V., State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465** has to be taken into consideration.

“What is the quantum of punishment is not much important on the other hand, the Courts ought to consider such nature and gravity of the accusation and the exact role



of the accused must be properly comprehended before arrest is made. Further the antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence, and the possibility of the applicant to flee from justice is also to be considered. The possibility of the accused's likelihood to repeat similar or other offences and where the accusations have been made only with the object of injuring or humiliating the applicant by arrest him or her has to be looked into. It is equally important to note that impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people has to be taken into consideration. The Hon'ble Supreme Court has clearly laid down caution that the Courts must evaluate the entire available material against the accused very carefully and while considering the prayer for grant of anticipatory bail. While granting the anticipatory bail the balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair



and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused. While considering the objections of the prosecution, the court has to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant at time of granting anticipatory bail. Further the frivolity in prosecution should always be considered while granting anticipatory bail. Also order of anticipatory bail should not be “blanket” in the sense that it should not enable the accused to commit further offences and claim relief. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident”.

24. By applying the above dictum of law and guidelines laid by the Hon'ble Supreme Court of India, the present fact of the case has to be analyzed and considered. The certified copies of complaint and FIR produced by the petitioners disclose that there is an apprehension of their arrest by the respondent police for the alleged non-bailable offences. The offences are cognizable and non-bailable, but they are not punishable



with life or death penalty. It is prayed in the application that if they are arrested, they will be subjected to harassment while they are ready to abide by the conditions and furnish surety for their release. Under such circumstances, this Court has to make balance between the petitioners on one hand and the Investigating Officer on another hand. If the petitioners are arrested, they will be put to inconvenience. It is pertinent to note that from the above discussion the custodial interrogation of the accused Nos.1 and 2/petitioners is not at all required for the alleged offences as shown in the FIR. By considering all the above facts and arguments canvassed by prosecution, it is found that if stringent conditions are imposed on the appearance of the petitioners/accused No.1 and 2 before the I.O./Court the purpose of prosecution objection that petitioners/accused Nos.1 and 2 would not appear for enquiry before I.O. and trial before Court, would be met with. At this juncture, it is equally important to note that when the petitioners are ready to abide by the terms and conditions imposed by the Court and when ready to face the trial by offering adequate surety, this Court is satisfied and is of the opinion that no useful purpose will be served by allowing the respondent police to apprehend the petitioners for interrogation. There is absolutely no any special ground made out by the prosecution to reject this bail petition. Accordingly, under these



circumstances, the petitioners have made out sufficient ground for granting anticipatory bail in their favour at this stage as prayed for as there exist reason to believe that they may be arrested in non-bailable offences. Accordingly, I answer Point Nos.1 and 2 in the **affirmative**.

25. **Point No.3**: In view of answer of this Court on point Nos.1 and 2, this court pass the following:-

ORDER

The bail petition filed by the petitioners U/s.482 of The Bharatiya Nagarik Suraksha Sanhita is hereby allowed.

The petitioners are ordered to be released on bail on their executing personal bond for Rs.1,00,000/- each with one surety for like sum to the satisfaction of the concerned I.O./Court in the event of their arrest in the case in Crime No.149/2025 of Kundapura P.S., subject to following conditions:

1. The petitioners shall make themselves available for interrogation by the I.O. as and when required till the final report is filed. Further, they shall assist the I.O. in further investigation of the case.



2. The petitioners shall surrender before the concerned police within 30 days from the date of this order without fail.

3. They shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/ her from disclosing such facts to the Court or to the concerned I.O.,

4. They shall not hamper further investigation of the case and tamper with prosecution witnesses in any manner and shall not intimidate the complainant.

5. They shall not commit similar offences or any offences during the pendency of case,

6. They shall appear before the concerned Court as and when directed.

7. They shall not leave the jurisdiction of this Court/India without the prior permission of the concerned court.

8. They shall not change their place of residence outside the jurisdiction of concerned Court without prior intimation to that Court, and



9. They shall furnish their residential ID address proof.

(Typed to my dictation by the Stenographer directly on Computer, corrected by me and then pronounced in open Court on this the **8th day of January, 2026**)

(Abdul Rahim Hussain Shaikh)
I Addl. District and Sessions Judge,
Udupi, (sitting at Kundapura)