

APHC010068382025



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3369]

MONDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO

CRIMINAL PETITION NO: 1461/2025

Between:

Smt Vidadala Rajani and Others

...PETITIONER/ACCUSED(S)

AND

The State Of Andhra Pradesh and
Others

...RESPONDENT/COMPLAINANT(S)

Counsel for the Petitioner/accused(S):

1.S DUSHYANTH REDDY

Counsel for the Respondent/complainant(S):

1.V V LAKSHMI NARAYANA

2.PUBLIC PROSECUTOR

CRIMINAL PETITION NO: 2147/2025

Between:

U Jeevan Reddy

...PETITIONER/ACCUSED

AND

The State Of Andhra Pradesh

...RESPONDENT/COMPLAINANT

Counsel for the Petitioner/accused:

1.M R K CHAKRAVARTHY

Counsel for the Respondent/complainant:

1.PUBLIC PROSECUTOR

CRIMINAL PETITION NO: 2697/2025**Between:**

Karubolu Anil Kumar

...PETITIONER/ACCUSED

AND

The State Of Andhra Pradesh

...RESPONDENT/COMPLAINANT

Counsel for the Petitioner/accused:

1.RAVURI LEELA SAI SAMPATH

Counsel for the Respondent/complainant:

1.PUBLIC PROSECUTOR

CRIMINAL PETITION NO: 2274/2025**Between:**

Volupalli Mohan Ranga Rao

...PETITIONER/ACCUSED

AND

The State Of Andhra Pradesh

...RESPONDENT/COMPLAINANT

Counsel for the Petitioner/accused:

1.KIRAN TIRUMALASETTI

Counsel for the Respondent/complainant:

1.PUBLIC PROSECUTOR

CRIMINAL PETITION NO: 3329/2025**Between:**

Salapu Suresh and Others

...PETITIONER/ACCUSED(S)

ANDThe State Of Andhra Pradesh and
Others

...RESPONDENT/COMPLAINANT(S)

Counsel for the Petitioner/accused(S):

1.VENKATA SIVA NAGARAJ BONKURI

Counsel for the Respondent/complainant(S):

1.PUBLIC PROSECUTOR

CRIMINAL PETITION NO: 3344/2025**Between:**

Kakani Govardhan Reddy

...PETITIONER/ACCUSED

AND

The State Of Ap

...RESPONDENT/COMPLAINANT

Counsel for the Petitioner/accused:

1.O M R LAW FIRM

Counsel for the Respondent/complainant:

1.PUBLIC PROSECUTOR

CRIMINAL PETITION NO: 3454/2025**Between:**

Gunthanala Nagamani

...PETITIONER/ACCUSED

ANDThe State Of Andhra Pradesh and
Others

...RESPONDENT/COMPLAINANT(S)

Counsel for the Petitioner/accused:

1.GEDDADA SRINIVAS

Counsel for the Respondent/complainant(S):

1.PUBLIC PROSECUTOR

The Court made the following COMMON ORDER:

1. Since a common issue arises in all the Criminal Petitions, they are being taken up for disposal by this common order.

2. (a) **Criminal Petition No.1461 of 2025**, under section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, '**BNSS**') is filed on behalf of the petitioners / A.2 to 4 respectively, seeking to grant anticipatory bail in connection with Cr.No.39 of 2025 on the file of Chilakaluripeta Town Police Station, Guntur District, for the offences punishable under sections 343, 506 r/w 34 of Indian Penal Code, 1860 (for short, '**IPC**') and section 3(2)(va)

and 3(1)(r), 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as '**the Act**'))

(b) **Criminal Petition No.2147 of 2025**, under section 482 of the BNSS is filed on behalf of the petitioner / Accused seeking to grant anticipatory bail in connection with Cr.No.21 of 2025 on the file of Hindupur Rural Police Station, Sri Satya Sai District, for the offences punishable under sections 109(1),115(1), 351(2) r/w 3(5) of Bharatiya Nyaya Sanhita, 2023 (for short, '**BNS**') and section 3(1)(s), 3(2)(v) of the Act.

(c) **Criminal Petition No.2697 of 2025**, under section 482 of the BNSS is filed on behalf of the petitioner / A.1 seeking to grant anticipatory bail in connection with Cr.No.316 of 2024 on the file of Muvvalavanipalem Police Station, Visakhapatnam City, for the offences punishable under sections 318(2), 351(2), 127(2), 329(4), 79 r/w 3(5) of BNS(old sections 417, 506, 342, 448, 509 r/w 34 of IPC) and sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Act.

(d) **Criminal Petition No.2274 of 2025**, under section 482 of the BNSS, is filed on behalf of the petitioner / A.5 seeking to grant anticipatory bail in connection with Cr.No.86 of 2025 on the file of Patamata Police Station, Vijayawada city, NTR District, for the offences punishable under sections 140(1), 308, 351(3) r/w 3(5) of BNS and section 3(2)(va) and 3(1)(r) of the Act.

(e) **Criminal Petition No.3329 of 2025**, under section 482 of the BNSS is filed on behalf of the petitioners / A.1 and A.2 seeking to grant anticipatory bail in connection with Cr.No.123 of 2025 on the file of Arilova Nagar Police Station, Visakhapatnam Commissionerate District, for the offences punishable under sections 69, 351(2) r/w 3(5) of BNS and sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Act.

(f) **Criminal Petition No.3344 of 2025**, under section 482 of the BNSS is filed on behalf of the petitioner / A.4 seeking to grant anticipatory bail in connection with Cr.No.24 of 2025 on the file of Podalakur Police Station, SPSR Nellore District, for the offences punishable under sections 447, 427, 379 r/w 34 of IPC and section 3 of the PDPP Act, Sections 21(1) and 21(4) of

the MMDR Act, section 3 and 5 of Explosive Substances Act and Sections 3(1)(r), 3(2)(va) and 3(2)(iii) of Act.

(g) **Criminal Petition No.3454 of 2025**, under section 482 of the BNSS is filed on behalf of the petitioner / A.1 seeking to grant anticipatory bail in connection with Cr.No.9 of 2025 on the file of Nandyal II Town Police Station, Nandyal District, for the offences punishable under sections 329(4), 324(4), 115(2), 351(2), 79 r/w 3(5) of BNS and section 3(1)(r)(s) of the Act.

3. Heard Sri S. Dushyanth Reddy, learned counsel for the petitioners in CrI.P.No.1461 of 2025, Sri M.R.K.Chakravarthy, learned counsel for the petitioner in CrI.P.No.2147 of 2025, Sri Ravuri Leela Sai Sampath, learned counsel for the petitioner in CrI.P.No.2697 of 2025, Sri K. Chidambaram, learned senior counsel for petitioner in CrI.P.No.2274 of 2025, Sri B.V.S.Nagaraj, learned counsel for the petitioners in CrI.P.No.3329 of 2025, Sri O. Manohar Reddy, learned senior counsel for the petitioner in CrI.P.No.3344 of 2025, Sri Dr. Geddada Srinivas, learned counsel for the petitioner in CrI.P.No.3454 of 2025, Sri V.V.Lakshmi Narayana, learned counsel for the defacto complainant in CrI.P.No.1461 of 2025, Sri Dammalapati Srinivas, learned Advocate General, appearing for the Respondent – State and Sri M. Lakshmi Narayana, learned Public Prosecutor for the Respondent – State. The learned counsel for the petitioners, the learned counsel for the respondent / defacto complainant, the learned Advocate General, and the learned Public Prosecutor advanced substantially similar arguments across all the petitions. Accordingly, the following portion of this order sets out a consolidated summary of their submissions, without attributing them to any counsel individually.

4. The learned counsel for the petitioners contend that Section 14A(2) of the Act refers specifically to bail and not anticipatory bail. It is argued that anticipatory bail is a special provision, which takes precedence over the general provision outlined in Section 14A(2) of the Act.

5. The learned Public Prosecutor, appearing on behalf of the State, submitted that by virtue of Section 14A of the Act, the High Court cannot entertain an anticipatory bail petition in its original concurrent jurisdiction. Consequently, a petition for pre-arrest bail cannot be maintained before this Court. In support of this contention, the learned Public Prosecutor relied upon the orders passed by this Court in ***Deepak Kumar Tala V. State of Andhra Pradesh***¹, ***Bandi Raghava Reddy V. State of Andhra Pradesh***², and ***Chalivendra Ramakrishna and others V. State of Andhra Pradesh***³, wherein, it is held that an application for bail or anticipatory bail can be filed only before the Special Court or the Exclusive Special Court as the case may be and not before the High Court. An order granting or refusing bail or anticipatory bail by the Special Court or Exclusive Special Court can be assailed before this Court invoking its appellate jurisdiction provided in Section 14A of the Act. This Court had deliberated these aspects on earlier occasions when similar questions were raised and it reached the same conclusions and reference can be made to the following:

1. *Nakka Nagireddy V. State of A.P.*⁴

2. *Deepak Kumar Tala V. State of A.P.*⁵

Similar conclusions were reached at by other High Courts.

Reference can be made to the following:

1. *K.M. Basheer V. Rajani K.T.*⁶

2. *Lokesh V. State of Karnataka*⁷

3. *Provision of Section 14-A of the SC/ST (Prevention of Atrocities) Amendment Act, 2015, In re*⁸

4. *Atul Rajput V. State of M.P.*⁹

6. I have carefully gone through the orders passed by this Court, as cited above. After hearing both parties, this Court observes that the findings

¹ 2024 SCC OnLine AP 5790

² 2025 SCC OnLine AP 31

³ 2025 SCC OnLine AP 22

⁴ 2024 SCC OnLine AP 5322

⁵ Criminal Petition No. 6487 of 2024, order dated 22-10-2024 of this Court

⁶ 2022 SCC OnLine Ker 4470

⁷ 2021 SCC OnLine Kar 15742

⁸ 2018 SCC OnLine All 2087

⁹ CrI.A.No.3261 of 2024, dt.10-4-2024 (MP)

outlined in the earlier orders shed light on the procedure to be followed concerning the relevant provisions of the Cr.P.C., and the Act, concerning the grant of bail, and the relevant extract is as follows:

(a) In terms of Section 2(d) read with Section 14 of the Act, 1989 and in terms of Section 2(bd) read with Section 14 of the Act, 1989, there are Special Courts and Exclusive Special Courts for dealing with offences under the Act, 1989. While these Courts are entitled to take cognizance and conduct trials, there is no specific provision addressing the aspect of bails. Therefore, the Special Court or Exclusive Special Court which entertain bails and anticipatory bails draw their powers from the Criminal Procedure Code, 1973 and presently from BNSS, 2023.

(b) Chapter XXXV of BNSS, 2023 is headed as provisions as to bail and bonds. They provide for bail in bailable offences and bail in non-bailable offences. In the same chapter there is Section 482 of BNSS which is given heading “direction for grant of bail to person apprehending arrest”. For reference, the section heading of Section 480 of BNSS reads “when bail may be taken in case of non-bailable offence”. Section 2(b) of BNSS defines “bail”. There is no separate definition for pre-arrest bail.

7. Chapter 33 of the Code of Criminal Procedure (**Cr.P.C.**) is titled 'Provisions as to Bail and Bonds' and comprises Sections 436 to 450. These sections address bail in the context of both bailable and non-bailable offences. Section 438 of the Cr.P.C., specifically titled 'Direction for Grant of Bail to Person Apprehending Arrest,' is relevant here. To the extent necessary, the relevant portion of the provision is extracted below:

“438.Direction for grant of bail to person apprehending arrest.—(1)
Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:

- (i) the nature and gravity of the accusation;*
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
- (iii) the possibility of the applicant to flee from justice; and*
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the*

application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in charge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.”

8. A perusal of Sub-section (1) of Section 438 of the Cr.P.C., reveals that an application for anticipatory bail may be filed either before the High Court or the Court of Sessions. Accordingly, both courts possess concurrent jurisdiction to entertain such an application.

9. Thus, in view of the aforesaid provision, an accused who apprehends arrest may seek pre-arrest bail by filing an application either before this Court or the Court of Sessions. In light of this legal position, the petitioners have directly approached this Court seeking relief in the nature of anticipatory bail.

10. The first submission advanced by the State is that, in cases involving caste-based atrocities, anticipatory bail is not maintainable by virtue of Sections 18 and 18A of the Act. The said provisions are reproduced below:

“18. Section 438 of the Code not to apply to persons committing an offence under the Act.— Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

18-A. No enquiry or approval required.—(1) For the purposes 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 provisions 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.”

11. It is now relevant to extract Section 14A of the Act:

“14A. Appeals:—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section(3) of section 378 of the Criminal Procedure Code, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days : Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.”

12. This Court in **Bandi Raghava Reddy’s** case (supra), observed at paragraph Nos.16, 17 and 18 as follows:

16. *It is undisputed that an order of bail is interlocutory in nature and normally there is no provision for appeal. However, the special enactment such as the Act, 1989 has departed from the general jurisprudence and made a provision for appeals. With reference to bails one would notice in Section 14A(2) of the Act, 1989, that appellate jurisdiction as against orders of the Special Court or Exclusive Special Court granting or refusing bail is vested with the High Court. From this provision two things are clear. As per the statute bails are to be considered by the Special Courts in the first instance. Orders disposing of bail petitions are appealable and High Court is the appellate Court for that purpose. According to the learned Senior Counsel, this is applicable only for bails and not for anticipatory bails. Now, this contention must be tested. Section 18 of the Act, 1989 is required to be noticed here:*

“18. Section 438 of the Code not to apply to persons committing an offence under the Act.— Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

17. From this provision it is clear that where the crime alleges offences under the Act, 1989, Section 438 of the Code of Criminal Procedure dealing with anticipatory bails (presently Section 482 of BNSS) does not apply. Thus, the bar under Section 18 of the Act, 1989 being statutory applies to every Court including this Court. If allegations in the complaint/F.I.R. prima facie alleged offences under the Act, 1989 the bar operates. On the other hand, the facts alleged do not disclose existence of essential ingredients required to constitute an offence under the Act, 1989 the bar disappears and this consideration has to be on judicial side as held in *Shajan Skaria's case*⁷. Therefore, the Special Court or Exclusive Special Court while dealing with an application for anticipatory bail must first ascertain whether a prima facie case for an offence punishable under the Act is made out or not. If the answer is 'Yes', the bar under Sections 18 and 18A of the Act, 1989 will come into play and there cannot be any further consideration on the entitlement of anticipatory bail. If the answer to the above question is 'No', the Special Court will be entitled to consider the anticipatory bail application on merits. Any such order that is passed by the Special Court or Exclusive Special Court is appealable to this Court as per Section 14A(2) of the Act, 1989.

18. If the argument of the learned Senior Counsel is accepted the result would be like this. With reference to regular bails the High Court is not holding original concurrent jurisdiction to decide and it can decide such prayers only in its appellate jurisdiction. On the other hand, in a case where the prayer is for pre-arrest bail, this Court has to exercise its original concurrent jurisdiction. When in law there is no difference between bail and anticipatory bail in their true purport there can be no occasion to read down the word bail used in Section 14A(2) of the Act, 1989 as applicable only to regular bails and not to anticipatory bails. This Court cannot be said to hold concurrent original jurisdiction as well as appellate jurisdiction in the similar subject matter. Anticipatory bail referred in Section 18 of the Act, 1989 cannot be said to be a special provision to say that it prevails over Section 14A of the Act, 1989. Any other interpretation would make Section 14A(2) of the Act, 1989 otiose.

13. Conversely, the learned senior counsel for the petitioners contend that there exists a distinction between regular bail and anticipatory bail. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in ***Shajan Skaria V. State of Kerala and another***¹⁰, wherein it evaluated the concept of anticipatory bail and held that:

¹⁰ 2024 SCC OnLine SC 2249

18. *It is apparent on a plain reading of the Statement of Objects and Reasons accompanying the Bill for introducing Section 438 in the CrPC that the legislature felt that it was imperative to evolve a device by which an alleged accused is not compelled to face ignominy and disgrace at the instance of influential people who try to implicate their rivals in false cases. The purpose behind incorporating Section 438 in CrPC was to recognise the importance of personal liberty and freedom in a free and democratic country. A careful reading of this section reveals that the legislature was keen to ensure respect for the personal liberty by pressing in service the age-old principle that an individual is presumed to be innocent till he is found guilty by the court. [See : Siddharam Satlingappa Mhetre v. State of Maharashtra reported in (2011) 1 SCC 694]*

24. *It is manifest from a plain reading of Section 18 referred to above that it bars the applicability of Section 438 of the CrPC in respect of offences under the Act, 1989. The legislature in its wisdom thought fit that the benefit of anticipatory bail should not be made available to the accused in respect of offences under the Act, 1989, having regard to the prevailing social conditions which give rise to such offences and the apprehension that the perpetrators of such atrocities are likely to threaten and intimidate the victims and prevent or obstruct them in the prosecution of such offences, if they are allowed to avail the benefit of anticipatory bail.*

35. *Thus, the decision in Prathvi Raj Chauhan (supra) makes it abundantly clear that even while upholding the validity of Section 18-A of the Act, 1989, this Court observed that if the complaint does not make out a prima facie case for applicability of the provisions of the Act, 1989 then the bar created by Sections 18 and 18-A(i) shall not apply and thus the court would not be precluded from granting pre-arrest bail to the accused persons.*

38. *It was observed by this Court that although Section 18 of the Act, 1989 creates a bar for invoking Section 438 of the CrPC yet the courts are entrusted with a duty to verify the averments in the complaint and to find out whether an offence under the Act, 1989 is prima facie made out or not. It was further observed that while considering the application for anticipatory bail, the scope for appreciation of evidence and other material is limited and the courts are not expected to undertake an intricate evidentiary inquiry of the materials on record. The relevant observations are reproduced hereinbelow:*

“9. 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 other words, if there is a specific averment in the complaint, namely,

insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.”

(Emphasis supplied)

41. It is clear from the aforesaid discussion that Section 18 of the Act, 1989 does not impose an absolute fetter on the power of the courts to examine whether a prima facie case attracting the provisions of the Act, 1989 is made out or not. As discussed, Section 18 stipulates that in any case which involves the arrest of any person on the accusation of having committed an offence under the Act, 1989, the benefit of anticipatory bail under Section 438 of CrPC would not be available to the accused. We have deliberated on the significance of the expression “arrest of any person” appearing in the text of Section 18 of the Act, 1989 and are of the view that Section 18 bars the remedy of anticipatory bail only in those cases where a valid arrest of the accused person can be made as per Section 41 read with Section 60A of CrPC.

14. In light of the aforesaid observations, this Court views that regular bail and anticipatory bail are jurisdictionally and conceptually distinct. Both regular bail and anticipatory bail are not just different in terms of timing; they are fundamentally distinct in terms of purpose, procedural stage, and scope. Regular bail is sought post-arrest and concerns whether the accused should remain in custody. In contrast, anticipatory bail serves as a preemptive safeguard of personal liberty before any arrest occurs. In light of this distinction, this Court respectfully finds itself unable to concur with the earlier observation that, in law, there is no real difference between bail and

anticipatory bail in their true purport. Accordingly, the interpretation that the term “bail” under Section 14A(2) of the Act, encompasses both forms may not be accepted, as it fails to account for their substantive differences.

15. Further, this Court respectfully finds it unable to concur with the observations made in ***Bandi Raghava Reddy (supra)***, where it was held that the High Court cannot simultaneously exercise both original and appellate jurisdiction over cases involving similar subject matter. The learned counsel for the petitioners submit that under Section 439 of the Cr.P.C., both the Sessions Court and the High Court exercise concurrent jurisdiction to consider bail applications in IPC offences. Even in special statutes such as the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), while additional procedural safeguards are imposed, like Section 37 of the NDPS Act, the High Court’s original jurisdiction is not ousted.

16. Also, nowhere in Section 14A(2) of the Act is there an express exclusion of the High Court’s original jurisdiction under Section 438 of the Cr.P.C., particularly when the alleged offences do not attract any provision of the Act. If the legislature intended to include anticipatory bail within the appellate mechanism of Section 14A of the Act, it could have said so in clear terms, just as it did in Section 18, where anticipatory bail is explicitly barred.

17. In light of the observations made in ***Shajan Skaria*** (cited supra), where the allegations do not prima facie attract the provisions of the Act, Section 18 of the Act has no application. In such cases, the embargo on anticipatory bail falls away, and the general remedy under Section 438 of the Cr.P.C., becomes fully available. To require that such applications must first be moved before the Special Court, followed by an appeal under Section 14A, would amount to reading a procedural restriction where none exists.

18. Such an interpretation would imply that the High Court is confined to an appellate role, even when the offence does not fall under the Act. This

proposition is both illogical and contrary to the broader criminal procedure framework. It would effectively convert Section 14A into a procedural straitjacket, curbing the High Court's wide original jurisdiction under Section 438 without a clear statutory mandate. In the absence of an express statutory bar, there can be no judicial presumption of exclusion. To infer an implied bar in this context would create inconsistency and, more importantly, may unintentionally elevate procedural rigidity over the protection of personal liberty.

19. The original criminal jurisdiction of the High Court, particularly under Section 438 of the Cr.P.C., is not to be confined within a narrow, technical tunnel. It is a wide constitutional avenue designed to safeguard individual liberty, especially through protective mechanisms like anticipatory bail. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, being a special legislation, undoubtedly serves a vital purpose in protecting victims of caste-based atrocities. However, this protective intent cannot be stretched to curtail constitutional remedies available to the accused, particularly in cases where the allegations do not, even prima facie, attract the provisions of the Act.

20. Moreover, the mere fact that the High Court, rather than the Special Court, entertains the application does not result in any substantive prejudice to the interests of the State or the victim. If the High Court entertains and dismisses the anticipatory bail application, the prosecution loses nothing. It still has its case. If, on the other hand, the application is allowed, that too after judicial scrutiny, the accused gets protection from arbitrary arrest.

21. Thus, in light of the above observations, this Court is of the considered view that where anticipatory bail is the only barrier between liberty and misuse of law, the High Court must not surrender that power unless expressly divested of it by statute. Therefore, this Court finds considerable force in the submissions advanced by the learned counsel for the petitioners that, when

the offences alleged do not attract the provisions of the Act, the bar under Section 18 does not come into play. Consequently, the appellate mechanism under Section 14A of the Act is also not attracted, and the remedy under Section 438 Cr.P.C., remains not only available but also exercisable before the High Court in its original jurisdiction. Accordingly, I respectfully differ from the view taken by my learned brother, and am of the opinion that to put a quietus to the issue, it is desirable to refer the matter for an authoritative pronouncement to obtain finality.

22. Therefore, the Registry is directed to place the matter before the Hon'ble the Chief Justice for the constitution of an appropriate Bench to decide the following reference:

“Whether, in cases where the alleged offence does not attract the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:

(i) An application for anticipatory bail is maintainable exclusively before the Special Court or the Exclusive Special Court, and the High Court is confined to exercising appellate jurisdiction only under Section 14A(2) of the Act; or

(ii) Does the High Court retain its concurrent original jurisdiction under Section 438 of the Criminal Procedure Code to entertain such applications?

T. MALLIKARJUNA RAO, J

Date: 21.04.2025
SAK

THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO

Criminal Petition Nos.1461, 2147, 2697, 2274, 3329,
3344 and 3454 of 2025

Date: 21.04.2025

SAK