DR. SUBHASH KASHINATH MAHAJAN A

v.

THE STATE OF MAHARASHTRA AND ANR.

(Criminal Appeal No. 416 of 2018)

MARCH 20, 2018 B

[ADARSH KUMAR GOEL AND UDAY UMESH LALIT, JJ.]

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – s.18 – Exclusion of anticipatory bail, in cases of false implications – Procedural safeguards – Respondent no.2-complainant, a govt. employee belonging to Scheduled Caste, lodged FIR in 2006 against his two senior officers (non-Scheduled Caste) when they made adverse entry in his Annual Confidential Report – Sanction to proceed against the said two senior officers, refused by appellant in 2011 – Present FIR lodged by respondent no.2 against the appellant in 2016 – Appellant sought quashing of proceedings, which was rejected by High Court – Held: There 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 mala fide *– Exclusion of anticipatory bail is justified only to protect victims of perpetrators of crime in genuine cases– It cannot be made applicable to those who are falsely implicated for extraneous reasons – To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated – Arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded – Such reasons must be scrutinized by Magistrate for permitting further detention – In the instant case, the proceedings against appellant are clear abuse of process of court and are quashed – Code of Criminal Procedure, 1973 – s.438 and ss.482, 41, 41A, 197 – Penal Code, 1860 – ss.182, 192, 193, 203 and s.219 r/w s.34 – Constitution of India – Arts.14, 15, 16 and 21 – The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Rules, 1995 – r.12(4) – Protection of Civil Rights Act, 1955 – Terrorist and Disruptive* H

A *Activities (Prevention) Act, 1985 – s.17(4), (5) – Unlawful Activities (Prevention) Act, 1967 – ss.43D(4), (5) – Maharashtra Control of Organised Crime Act, 1999 – ss.21(3), (4) – Narcotic Drugs and Psychotropic Substances Act, 1985 – s.37.*

Code of Criminal Procedure, 1973 – ss.41, 41A – Power of
B *arrest – Held: Enforcement of a legislation has to be consistent with the fundamental rights – Power of arrest is to be exercised with caution – Mere unilateral allegation by any individual belonging to any caste, when such allegation is clearly motivated and false, cannot deprive a person of his liberty without an*
C *independent scrutiny – Scheduled Castes and the Scheduled Tribes(Prevention of Atrocities) Act, 1989.*

Interpretation of Statutes – Literal interpretation vis-à-vis *purposive interpretation – Held: A statute is to be read in the context of the background and its object – Exclusion of provision for anticipatory bail cannot possibly, by any reasonable interpretation,*
D *be treated as applicable when no case is made out or allegations are patently false or motivated – Doctrines/Principles – Doctrine of proportionality.*

Criminal Trial – Presumption of innocence – Held: Presumption of innocence is a human right – Placing of burden of proof on
E *accused in certain circumstances may be permissible but there cannot be presumption of guilt so as to deprive a person of his liberty – Protection of innocent is as important as punishing the guilty – Human rights.*

Constitution of India – Powers/Role of Supreme Court to issue
F *appropriate orders or directions for enforcement of fundamental rights – Held: Role of Supreme Court travels beyond merely dispute settling and directions can be issued which are not directly in conflict with a valid statute – Power to declare law carries with it, within the limits of duty, to make law when none exists.*

G *Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Purpose and object of – Discussed.*

Allowing the appeal, the Court

HELD: <u>Consideration of the issue whether directions can be issued by this Court to protect fundamental right under Article</u>
H **<u>21 against uncalled for false implication and arrests</u>**

1.1 Jurisdiction of Supreme Court to issue appropriate orders or directions for enforcement of fundamental rights is a basic feature of the Constitution. Supreme Court, as the ultimate interpreter of the Constitution, has to uphold the constitutional rights and values. Articles 14, 19 and 21 of the Constitution represent the foundational values which form the basis of the rule of law. Contents of the said rights have to be interpreted in a manner which enables the citizens to enjoy the said rights. Right to equality and life and liberty have to be protected against any unreasonable procedure, even if it is enacted by the legislature. The substantive as well as procedural laws must conform to Articles 14 and 21. Any abrogation of the said rights has to be nullified by this Court by appropriate orders or directions. Power of the legislature has to be exercised consistent with the fundamental rights. Enforcement of a legislation has also to be consistent with the fundamental rights. Undoubtedly, the Supreme Court has jurisdiction to enforce the fundamental rights of life and liberty against any executive or legislative action. The expression 'procedure established by law' under Article 21 implies just, fair and reasonable procedure. [Para 31] [913-G-H; 914-A-D]

1.2 The Supreme Court is not expected to adopt a passive or negative role and remain bystander or a spectator if violation of rights is observed. It is necessary to fashion new tools and strategies so as to check injustice and violation of fundamental rights. No procedural technicality can stand in the way of enforcement of fundamental rights. Role of Supreme Court travels beyond merely dispute settling and directions can certainly be issued which are not directly in conflict with a valid statute. Power to declare law carries with it, within the limits of duty, to make law when none exists. There are innumerable occasions when Supreme Court has issued directions for enforcement of fundamental rights e.g., directions regarding functioning of caste scrutiny Committee; directions to regulate appointment of law officers; directions to regulate powers of this Court and High Courts in designating Senior Advocates; guidelines have been issued for the welfare of a child accompanying his/her mother in imprisonment; directions for checking trafficking of women and children; for night shelters for the homeless; directions to check

A **malnutrition in children; directions to provide medical assistance by Government run hospitals; directions for protection of human rights of prisoners; directions for speedy trial of under trials. [Paras 32, 35] [914-D-F; 917-D-F]**

Maneka Gandhi vs. UOI **(1978) 1 SCC 248 : [1978] 2**
B **SCR 621 – followed.**

1.3 In *Joginder Kumar,* it was observed that horizon of human rights is expanding. There are complaints of violation of human rights because of indiscriminate arrests. The law of arrest is of balancing individual rights, liberties and privileges, duties,
C **obligations and responsibilities. On the one side is the social need to check a crime, on the other there is social need for protection of liberty, oppression and abuse by the police and the other law enforcing agencies. The 3rd Report of the National Police Commission was noted to the effect that power of arrest was one of the chief sources of corruption of police. 60% of arrests were**
D **unnecessary or unjustified. The arrest could be justified only in grave offences to inspire the confidence of the victim, to check the accused from committing further crime and to prevent him from absconding. The National Police Commission recommended that the police officer making arrest should record reasons. It**
E **was observed that no arrest can be made merely because it is lawful to do so. The exercise of power must be for a valid purpose. Except in heinous offences arrest must be avoided. This requirement was read into Article 21. In *Arnesh Kumar*, it was observed that arrest brings humiliation, curtails freedom and casts scars forever. It is considered a tool for harassment and**
F **oppression. The drastic power is to be exercised with caution. Power of arrest is a lucrative source of corruption. Referring to the amendment of law in Section 41 Cr.P.C., in the light of recommendations of the Law Commissions, it was directed that arrest may be justified only if there is 'credible information' or**
G **'reasonable suspicion' and if arrest was necessary to prevent further offence or for proper investigation or to check interference with the evidence. Reasons are required to be recorded. However, compliance on the ground is far from satisfactory for obvious reasons. The scrutiny by the Magistrates is also not adequate. [Para 36] [918-A-F]**

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Joginder Kumar v. State of U.P. **(1994) 4 SCC 260;** *Arnesh Kumar v. State of Bihar* **(2014) 8 SCC 273 : [2014] 8 SCR 128 – relied on.**

Further consideration of potential impact of working of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 on spreading casteism

2. Working of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 should not result in perpetuating casteism which can have an adverse impact on integration of the society and the constitutional values. Secularism is a basic feature of the Constitution. Irrespective of caste or religion, the Constitution guarantees equality in its preamble as well as other provisions including Articles 14-16. The Constitution envisages a cohesive, unified and casteless society. Interpretation of the Atrocities Act should promote constitutional values of fraternity and integration of the society. This may require check on false implications of innocent citizens on caste lines. [Paras 42, 47] [929-H; 930-A-B; 933-B-C]

Issue of anticipatory bail

3.1 Section 18 of the Atrocities Act contains bar against grant of anticipatory bail. Exclusion of anticipatory bail has been justified only to protect victims of perpetrators of crime. It cannot be read as being applicable to those who are falsely implicated for extraneous reasons and have not committed the offence on *prima facie* independent scrutiny. Access to justice being a fundamental right, grain has to be separated from the chaff, by an independent mechanism. Liberty of one citizen cannot be placed at the whim of another. Law has to protect the innocent and punish the guilty. Thus considered, exclusion has to be applied to genuine cases and not to false ones. This will help in achieving the object of the law. If the provisions of the Act are compared as against certain other enactments where similar restrictions are put on consideration of matter for grant of anticipatory bail or grant of regular bail, an interesting situation emerges. [Paras 49-52] [933-D-E; 934-C-E]

3.2 Section 17(4) of the Terrorist and Disruptive Activities (Prevention) Act, 1985 ("TADA" - since repealed) stated

A **"…nothing in Section 438 of CrPC shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under the provisions of this Act…". Section 17(5) of the TADA Act put further restriction on a person accused of an offence punishable under the TADA Act being released on regular bail and one of the conditions was:**
B **Where the Public Prosecutor opposes the application for grant of bail, the court had to be satisfied that there were reasonable grounds for believing that the accused was not guilty of such offence and that he was not likely to commit any such offence while on bail. The provisions of the Unlawful Activities**
C **(Prevention) Act, 1967, namely under Section 43D(4) and 43D(5) are similar to the aforesaid Sections 17(4) and 17(5) of the TADA Act. Similarly the provisions of Maharashtra Control of Organised Crime Act, 1999, namely, Sections 21(3) and 21(4) are also identical in terms. Thus the impact of release of a person accused of having**
D **committed the concerned offences under these special enactments was dealt with by the Legislature not only at the stage of consideration of the matter for anticipatory bail but even after the arrest at the stage of grant of regular bail as well. The provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 are however, distinct in that the restriction under**
E **Section 37 is at a stage where the matter is considered for grant of regular bail. No such restriction is thought of and put in place at the stage of consideration of matter for grant of anticipatory bail. On the other hand, the provisions of the Act are diametrically opposite and the restriction in Section 18 is only at the stage of**
F **consideration of matter for anticipatory bail and no such restriction is available while the matter is to be considered for grant of regular bail. Theoretically it is possible to say that an application under Section 438 of CrPC may be rejected by the Court because of express restrictions in Section 18 of the Atrocities Act but the very same court can grant bail under the provisions of Section**
G **437 of CrPC, immediately after the arrest. There seems to be no logical rationale behind this situation of putting a fetter on grant of anticipatory bail whereas there is no such prohibition in any way for grant of regular bail. It is, therefore, all the more necessary and important that the express exclusion under Section 18 of the Atrocities Act is limited to genuine cases and**
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inapplicable where no *prima facie* case is made out. [Para 52] [934-E-H; 935-A-E]

3.3 If a person is able to show that, prima facie, he has not committed any atrocity against a member of SC and ST and that the allegation was *mala fide* and *prima facie* false and that prima facie no case was made out, no justification is seen for applying Section 18 in such cases. The perpetrators of atrocities should not be granted anticipatory bail so that they may not terrorise the victims. Consistent with this view, it can certainly be said that innocent persons against whom there was no *prima facie* case or patently false case cannot be subjected to the same treatment as the persons who are prima facie perpetrators of the crime. [Para 53] [935-F-H; 936-A]

3.4 It is well settled that a statute is to be read in the context of the background and its object. Instead of literal interpretation, the court may, in the present context, prefer purposive interpretation to achieve the object of law. Doctrine of proportionality is well known for advancing the object of Articles 14 and 21. A procedural penal provision affecting liberty of citizen must be read consistent with the concept of fairness and reasonableness. In the present context, wisdom of legislature in creating an offence cannot be questioned but individual justice is a judicial function depending on facts. As a policy, anticipatory bail may be excluded but exclusion cannot be intended to apply where a patently malafide version is put forward. Courts have inherent jurisdiction to do justice and this jurisdiction cannot be intended to be excluded. Thus, exclusion of Court's jurisdiction is not to be read as absolute. There can be no dispute with the proposition that mere unilateral allegation by any individual belonging to any caste, when such allegation is clearly motivated and false, cannot be treated as enough to deprive a person of his liberty without an independent scrutiny. Thus, exclusion of provision for anticipatory bail cannot possibly, by any reasonable interpretation, be treated as applicable when no case is made out or allegations are patently false or motivated. If this interpretation is not taken, it may be difficult for public servants to discharge their bona fide functions and, in given cases, they can be blackmailed with the threat of a false case being registered under

the Atrocities Act, without any protection of law. This cannot be the scenario in a civilized society. Similarly, even a non public servant can be blackmailed to surrender his civil rights. This is not the intention of law. Such law cannot stand judicial scrutiny. It will fall foul of guaranteed fundamental rights of fair and reasonable procedure being followed if a person is deprived of life and liberty. Thus, literal interpretation cannot be preferred in the present situation. [Paras 56, 58 and 59] [936-D-E; 938-B-F]

3.5 The exclusion of Section 438 Cr.P.C. applies when a *prima facie* case of commission of offence under the Atrocities Act is made. On the other hand, if it can be shown that the allegations are *prima facie* motivated and false, such exclusion will not apply. Section 18 of the Atrocities Act has, thus, to be read and interpreted in this manner. [Paras 60, 63] [938-F-G; 943-C-D]

3.6 Concept of "Due process" and principles of 8th Amendment of the U.S. Constitution have been read by this Court as part of guarantee under Article 21 of the Constitution. Presumption of innocence is a human right. No doubt, placing of burden of proof on accused in certain circumstances may be permissible but there cannot be presumption of guilt so as to deprive a person of his liberty without an opportunity before an independent forum or Court. In view of the above, an accused is certainly entitled to show to the Court, if he apprehends arrest, that case of the complainant was motivated. If it can be so shown there is no reason that the Court is not able to protect liberty of such a person. There cannot be any mandate under the law for arrest of an innocent. The law has to be interpreted accordingly. In the working of the Act in the last three decades, it has been judicially acknowledged that there are instances of abuse of the Act by vested interests against political opponents in Panchayat, Municipal or other elections, to settle private civil disputes arising out of property, monetary disputes, employment disputes and seniority disputes. It may be noticed that by way of rampant misuse complaints are 'largely being *filed particularly against Public Servants/quasi judicial/judicial officers with oblique motive for satisfaction of vested interests'*. [Paras 64-66] [943-E; 944-F; 946-G-H; 947-A-B]

3.7 Innocent citizens are termed as accused, which is not intended by the legislature. The legislature never intended to use the Atrocities Act as an instrument to blackmail or to wreak personal vengeance. The Act is also not intended to deter public servants from performing their *bona fide* duties. Thus, unless exclusion of anticipatory bail is limited to genuine cases and inapplicable to cases where there is no *prima facie* case was made out, there will be no protection available to innocent citizens. Thus, limiting the exclusion of anticipatory bail in such cases is essential for protection of fundamental right of life and liberty under Article 21 of the Constitution. Accordingly, it is held that exclusion of provision for anticipatory bail will not apply when no *prima facie* case is made out or the case is patently false or *mala fide.* This may have to be determined by the Court concerned in facts and circumstances of each case in exercise of its judicial discretion. In doing so, a well established principle of law is being reiterated that protection of innocent against abuse of law is part of inherent jurisdiction of the Court being part of access to justice and protection of liberty against any oppressive action such as *mala fide* arrest. In doing so, the efficacy of Section 18 is not being diluted in deserving cases where Court finds a case to be *prima facie* genuine warranting custodial interrogation and pre-trial arrest and detention. Protection of innocent is as important as punishing the guilty. [Paras 67, 68 and 71] [947-B-F; 948-F-G]

3.8 It is difficult to hold that the legislature wanted exclusion of judicial function of going into correctness or otherwise of the allegation in a criminal case before liberty of a person is taken away. The legislature could not have intended that any unilateral version should be treated as conclusive and the person making such allegation should be the sole judge of its correctness to the exclusion of judicial function of courts of assessing the truth or otherwise of the rival contentions before personal liberty of a person is adversely affected. It is thus patent that in cases under the Atrocities Act, exclusion of right of anticipatory bail is applicable only if the case is shown to *bona fide* and that *prima facie* it falls under the Atrocities Act and not otherwise. Section 18 does not apply where there is no *prima facie* case or to cases of patent false implication or when the allegation is motivated for extraneous reasons. [Paras 73, 74] [949-E-H]

A **Issue of safeguards against arrest and false implications**

4.1 The under privileged need to be protected against any atrocities to give effect to the Constitutional ideals. The Atrocities Act has been enacted with this objective. At the same time, the said Act cannot be converted into a charter for exploitation or
B **oppression by any unscrupulous person or by police for extraneous reasons against other citizens as has been found on several occasions. Any harassment of an innocent citizen, irrespective of caste or religion, is against the guarantee of the Constitution. This Court must enforce such a guarantee. Law**
C **should not result in caste hatred. The preamble to the Constitution, which is the guiding star for interpretation, incorporates the values of liberty, equality and fraternity. There is need to safeguard innocent citizens against false implication and unnecessary arrest for which there is no sanction under the law which is against the constitutional guarantee and law of arrest**
D **laid down by this Court. Normal rule is to register FIR if any information discloses commission of a cognizable offence. There are however, exceptions to this rule and cases under the Atrocities Act also fall in exceptional category where preliminary inquiry must be held. Such inquiry must be time-bound and should not exceed seven days. Even if preliminary inquiry is held and**
E **case is registered, arrest is not a must. [Paras 75, 76, 77, 79 and 80] [950-B-E; 952-G]**

4.2 Accordingly, it is directed that in absence of any other independent offence calling for arrest, in respect of offences under the Atrocities Act, no arrest may be effected, if an accused person
F **is a public servant, without written permission of the appointing authority and if such a person is not a public servant, without written permission of the Senior Superintendent of Police of the District. Such permissions must be granted for recorded reasons which must be served on the person to be arrested and to the**
G **concerned court. As and when a person arrested is produced before the Magistrate, the Magistrate must apply his mind to the reasons recorded and further detention should be allowed only if the reasons recorded are found to be valid. To avoid false implication, before FIR is registered, preliminary enquiry may be made whether the case falls in the parameters of the Atrocities**
H **Act and is not frivolous or motivated. [Para 81] [953-C-E]**

Consideration of present case

5. The proceedings against the appellant are liable to be quashed. [Para 82] [953-E-F]

Conclusions

6. Conclusions are as follows:

i) Proceedings in the present case are clear abuse of process of court and are quashed.

ii) There 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 mala fide.* The view taken and approach of the Gujarat High Court in *Pankaj D Suthar* and *Dr. N.T. Desai* is approved and the judgments of this Court in *Balothia* and *Manju Devi* are clarified;

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

iv) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.

The above directions are prospective. [Para 83] [953-F-H; 954-A-D]

Pravinchandra N Solanki and Ors. v. State of Gujarat **(2012)1 GLR 499 – overruled.**

State of M. P. v. Ram Krishna Balothia **(1995) 3 SCC 221 : [1995] 1 SCR 897;** *Manju Devi v. Onkarjit Singh Ahluwalia* **(2017) 13 SCC 439 : [2017] 2 SCR 703 – clarified.**

A *Union of India v. Raghubir Singh* **(1989) 2 SCC 754 : [1989] 3 SCR 316;** *Indra Sawhney and Ors v. Union of India and Ors.* **(1992) Suppl. 3 SCC 217 : [1992] 2 Suppl. SCR 454;** *Kedar Nath v. State of Bihar* **[1962] Suppl. 2 SCR 769;** *Lalita Kumari v. State of U.P.* **(2014) 2 SCC 1: [2013] 14 SCR 713 – followed.**

B *Dr. N.T. Desai v. State of Gujarat* **(1997) 2 GLR 942;** *Pankaj D Suthar v. State of Gujarat* **(1992)1 GLR 405 – approved.**

C *D.K. Basu v. State of W.B.* **(1997) 1 SCC 416 : [1996] 10 Suppl. SCR 284;** *Subramanian Swamy v. UOI* **(2016) 7 SCC 221 : [2016] 3 SCR 865;** *Vilas Pandurang Pawar and Anr. v. State of Maharashtra and Ors.* **(2012) 8 SCC 795 : [2012] 8 SCR 270;** *Shakuntla Devi v. Baljinder Singh* **(2014) 15 SCC 521;** *Bandhua Mukti Morcha v.* UOI **(1984) 3 SCC 161 : [1984] 2 SCR 67;**

D *Vishakha v. State of Rajasthan* **(1997) 6 SCC 241 : [1997] 3 Suppl. SCR 404;** *Lakshmi Kant Pandey v. UOI* **(1983) 2 SCC 244;** *Common Cause v. UOI* **(1996) 1 SCC 753 : [1996] 1 SCR 89;** *M.C. Mehta v. State of T.N.* **(1996) 6 SCC 756 : [1996] 9 Suppl. SCR 726;**

E *Supreme Court Bar Asson. v. UOI* **(1998) 4 SCC 409 : [1998] 2 SCR 795;** *Dayaram vs. Sudhir Batham* **(2012) 1 SCC 333 : [2011] 15 SCR 1092;** *Rajesh Kumar v. State* **(2011) 13 SCC 706;** *Siddharam Satlingappa Mhetre v. State of Maharashtra* **(2011) 1 SCC 694 : [2010] 15 SCR 201;** *Rini Johar & Ors. v. State of M.P. & Ors.* **(2016) 11 SCC 703;** *Hema Mishra v. State of U.P.* **(2014) 4 SCC 453 : [2014] 1 SCR 465;** *Noor Aga v. State of Punjab* **(2008) 16 SCC 417: [2008] 10 SCR 379;** *Dadu alias Tulsidas v. State of Maharashtra* **(2000) 8 SCC 437;** *State of U.P. v. Bhagwant Kishore Joshi* **[1964] 3 SCR 221;** *P. Sirajuddin v. State of Madras* **(1970) 1 SCC 595 : [1971] 1 SCR 304 – relied on.**

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H *Joti Prasad v. State of Haryana* **(1993) Suppl. 2 SCC 497;** *Badan Singh @ Baddo v. State of U.P. & Ors.* **2002 CriLJ 1392;** *Adri Dharan Das v. State of West Bengal* **(2005) 4 SCC 303 : [2005] 2 SCR 188;** *Tata*

Chemicals Ltd. v. Commissioner of Customs **(2015) 11 SCC 628 : [2015] 7 SCR 132;** *Ganga Saran & Sons Pvt. Ltd. v. Income Tax Officer & Ors.* **(1981) 3 SCC 143 : [1981] 3 SCR 564;** *M. C. Abraham v. State of Maharashtra* **(2003) 2 SCC 649 : [2002] 5 Suppl. SCR 677;** *D. Venkatasubramaniam v. M. K. Mohan Krishnamachari* **(2009) 10 SCC 488 : [2009] 14 SCR 441;** *Gurbaksh Singh Sibbia etc. v. State of Punjab* **[1980] 3 SCR 383;** *Nikesh Tarachand Shah v. Union of India and Anr.* **(2017) 13 SCALE 609 : 2017 SCC OnLine SC 1355;** *Jones v. State* **2004 SCC OnLine Mad 922 : 2004 CriLJ 2755;** *Dhiren Prafulbhai Shah v. State of Gujarat* **2016 CriLJ 2217;** *Sharad v. State of Maharashtra* **2015(4) BomCR(Crl) 545;** *State of Jharkhand and Anr. v. Govind Singh* **(2005)10 SCC 437 : [2004] 6 Suppl. SCR 651;** *Rohitash Kumar and Ors v. Om Prakash Sharma and Ors.* **(2013) 11 SCC 451 : [2012] 13 SCR 47;** *Madhuri Patil v. Tribal Development* **(1994) 6 SCC 241 : [1994] 3 Suppl. SCR 50;** *State of Punjab v. Brijeshwar Singh Chahal* **(2016) 6 SCC 1 : [2016] 4 SCR 685;** *Indira Jaising v. Supreme Court of India* **(2017) 9 SCC 766;** *R.D. Upadhyay v. State of A.P.* **(2007) 15 SCC 337: [2006] 3 SCR 1132;** *Bachpan Bachao Andolan v. UOI* **(2011) 5 SCC 1 : [2011] 5 SCR 353;** *Union for Civil Liberties v. UOI* **(2010) 5 SCC 318;** *People's Union for Civil Liberties v. UOI* **(2004) 12 SCC 104;** *Paschim Banga Khet Mazdoor Samity v. State of W.B.* **(1996) 4 SCC 37 : [1996] 2 Suppl. SCR 331;** *Sunil Batra v. Delhi Admn.* **(1978) 4 SCC 494 : [1979] 1 SCR 392;** *Hussainara Khatoon (IV) v. Home Secy. State of Bihar* **(1980) 1 SCC 98 : [1979] 3 SCR 532;** *People's Union for Civil Liberties (PUCL) and Anr. Etc. v. Union of India and Anr.* **(2003) 4 SCC 399 : [2003] 2 SCR 1136;** *Lal Kamlendra Pratap Singh v. State of Uttar Pradesh and Ors.* **(2009) 4 SCC 437 : [2009] 4 SCR 1027;** *Kartar Singh v. State of Punjab* **(1994) 3 SCC 569 : [1994] 2 SCR 375;** *State of Punjab v. Dalbir Singh* **(2012) 3 SCC 346 : [2012] 4 SCR 608 – referred to.**

Case Law Reference

(1993) Suppl. 2 SCC 497	**referred to**	**Para 12**
2002 CriLJ 1392	**referred to**	**Para 12**
[2005] 2 SCR 188	**referred to**	**Para 12**
[2015] 7 SCR 132	**referred to**	**Para 12**
[1981] 3 SCR 564	**referred to**	**Para 12**
[2002] 5 Suppl. SCR 677	**referred to**	**Para 13**
[2009] 14 SCR 441	**referred to**	**Para 13**
[1980] 3 SCR 383	**referred to**	**Para 15**
(2017) 13 SCALE 609	**referred to**	**Para 16**
2004 CriLJ 2755	**referred to**	**Para 21**
2016 CriLJ 2217	**referred to**	**Para 21**
2015(4) BomCR(Crl) 545	**referred to**	**Para 21**
[2004] 6 Suppl. SCR 651	**referred to**	**Para 27**
[2012] 13 SCR 47	**referred to**	**Para 27**
[1978] 2 SCR 621	**followed**	**Para 31**
[1984] 2 SCR 67	**relied on**	**Para 32**
[1997] 3 Suppl. SCR 404	**relied on**	**Para 32**
(1983) 2 SCC 244	**relied on**	**Para 32**
[1996] 1 SCR 89	**relied on**	**Para 32**
[1996] 9 Suppl. SCR 726	**relied on**	**Para 32**
[1998] 2 SCR 795	**relied on**	**Para 32**
[2011] 15 SCR 1092	**relied on**	**Para 32**
[1989] 3 SCR 316	**followed**	**Para 33**
(2011) 13 SCC 706	**relied on**	**Para 34**
[1994] 3 Suppl. SCR 50	**referred to**	**Para 35**
[2016] 4 SCR 685	**referred to**	**Para 35**

(2017) 9 SCC 766	**referred to**	**Para 35**
[2006] 3 SCR 1132	**referred to**	**Para 35**
[2011] 5 SCR 353	**referred to**	**Para 35**
(2010) 5 SCC 318	**referred to**	**Para 35**
(2004) 12 SCC 104	**referred to**	**Para 35**
[1996] 2 Suppl. SCR 331	**referred to**	**Para 35**
[1979] 1 SCR 392	**referred to**	**Para 35**
[1979] 3 SCR 532	**referred to**	**Para 35**
(1994) 4 SCC 260	**relied on**	**Para 36**
[2014] 8 SCR 128	**relied on**	**Para 36**
[1996] 10 Suppl. SCR 284	**relied on**	**Para 37**
[2016] 3 SCR 865	**relied on**	**Para 39**
[1992] 2 Suppl. SCR 454	**followed**	**Para 44**
[2003] 2 SCR 1136	**referred to**	**Para 45**
[2012] 8 SCR 270	**relied on**	**Para 54**
(2014) 15 SCC 521	**relied on**	**Para 54**
[2014] 1 SCR 465	**relied on**	**Para 55**
[2009] 4 SCR 1027	**referred to**	**Para 55**
[1994] 2 SCR 375	**referred to**	**Para 55**
[1962] Suppl. 2 SCR 769	**followed**	**Para 57**
(2012)1 GLR 499	**overruled**	**Para 63**
[2012] 4 SCR 608	**referred to**	**Para 64**
[2008] 10 SCR 379	**relied on**	**Para 65**
[2010] 15 SCR 201	**relied on**	**Para 71**
(2016) 11 SCC 703	**relied on**	**Para 71**
(2000) 8 SCC 437	**relied on**	**Para 72**
(1992) 1 GLR 405	**approved**	**Para 74**

A	**(1997) 2 GLR 942**	**approved**	**Para 74**
	[1995] 1 SCR 897	**clarified**	**Para 74**
	[2017] 2 SCR 703	**clarified**	**Para 74**
	[2013] 14 SCR 713	**followed**	**Para 77**
B	**[1964] 3 SCR 221**	**relied on**	**Para 78**
	[1971] 1 SCR 304	**relied on**	**Para 78**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 416 of 2018.

C From the Judgment and Order dated 05.05.2017 of the High Court of Judicature at Bombay in Criminal Application No. 1015 of 2016.

Maninder Singh, ASG, Amerander Sharan (AC), C. U. Singh, Sr. Advs., Amit Anand Tiwari, Shashwat Singh, Samarth Khanna, Aprajita Mukherjee, Ms. Garima Bode Dey, M. Y. Deshmukh, Nandkumar D N. Deshmukh, Shakti Pandey, Shrikant R. Deshmukh, Yatin M. Jagtap, R. Balasubramanian, Shekhar Vyas, Prabhas Bajaj, Akshay Amritanshu, Ms. Aarti Sharma, M. K. Maroria, Arpit Rai, Nishant Ramakantrao Katneshwarkar, Abhay Anturkar, Abhay Anturkar & Associates, Gaurav Agrawal, C. George Thomas, P. Angibabu, P.V. Saravanaraja, Neelesh E Singh Rao, Ms. Manisha T. Karia, Ms. Nidhi Nagpal, Ms. Saumya, Shashank Mangal, Mayk Samy K., K. Muthu Ganesa Pandian, P. Somasunder, Advs., for the appearing parties.

The Judgment of the Court was delivered by

ADARSH KUMAR GOEL, J. 1. This appeal has been F preferred against the order dated 5th May, 2017 of the High Court of Judicature at Bombay in Criminal Application No.1015 of 2016.

2. On 20th November, 2017 the following order was passed by this Court:-

"Heard learned counsel for the parties.

G *Certain adverse remarks were recorded against respondent no. 2-Bhaskar Karbhari Gaidwad by the Principal and Head of the Department of the College of Pharmacy where respondent no. 2 was employed. Respondent No. 2 sought sanction for his prosecution under the provisions of the* H *Scheduled Castes and the Scheduled Tribes (Prevention of*

Atrocities) Act, 1989 and for certain other connected offences. The said matter was dealt with by the petitioner and sanction was declined. This led to another complaint by the respondent no. 2 against the petitioner under the said provisions. The quashing of the said complaint has been declined by the High Court.

The question which has arisen in the course of consideration of this matter is whether any unilateral allegation of mala fide can be ground to prosecute officers who dealt with the matter in official capacity and if such allegation is falsely made what is protection available against such abuse.

Needless to say that if the allegation is to be acted upon, the proceedings can result in arrest or prosecution of the person and have serious consequences on his right to liberty even on a false complaint which may not be intended by law meant for protection of a bona fide victim.

The question is whether this will be just and fair procedure under Article 21 of the Constitution of India or there can be procedural safeguards so that provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not abused for extraneous considerations.

Issue notice returnable on 10th January, 2018.

In the meanwhile, there shall be stay of further proceedings.

Issue notice to Attorney General of India also as the issue involves interpretation of a central statute.

Mr. Amrendra Sharan, learned senior counsel is requested to assist the Court as amicus. Mr. Sharan will be at liberty to have assistance of Mr. Amit Anand Tiwari, Advocate. ... ..."

3. Though certain facts are stated while framing the question already noted, some more facts may be noted. The appellant herein is the original accused in the case registered at City Police Station, Karad for the offences punishable under Sections 3(1)(ix), 3(2)(vi) and 3(2)(vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Atrocities Act) as also Sections 182, 192, 193, 203 and 219 read with 34 of the Indian Penal Code, 1860 (IPC). He was serving as Director of Technical Education in the State of Maharashtra at the relevant time.

A 4. The second respondent - the complainant is an employee of the department. He was earlier employed as a Store Keeper in the Government College of Pharmacy, Karad. He was later posted at Government Distance Education Institute, Pune. Dr. Satish Bhise and Dr. Kishor Burade, who were his seniors but non-scheduled caste, made adverse entry in his annual confidential report to the effect that his
B integrity and character was not good. He lodged FIR with Karad Police Station against the said two officers under the Atrocities Act on 4th January, 2006 on that ground. The concerned Investigating Officer applied for sanction under Section 197 Cr.P.C. against them to the Director of Technical Education on 21st December, 2010. The sanction was refused
C by the appellant on 20th January, 2011. Because of this, 'C' Summary Report was filed against Bhise and Burade which was not accepted by the court. He then lodged the present FIR against the appellant. According to the complainant, the Director of Technical Education was not competent to grant/refuse sanction as the above two persons are Class-I
D officers and only the State Government could grant sanction. Thus, according to him, the appellant committed the offences alleged in the FIR dated 28th March, 2016 by illegally dealing with the matter of sanction.

5. The complaint is fully extracted below:

"In the year 2009 I was working as store keeper in the Govt.
E *Pharmacy College Karad, at that time I have registered complaint to Karad City Police Station Cr. NO. 3122/09 u/s 3(1)9, 3(2)(7)6 of S.C. & S.T. (Prevention of Atrocities) Act and the investigation was done by Shri Bharat Tangade, then D.Y.S.P. Karad division Karad in the investigation 1) Satish Balkrushna Bhise, then Principal Pharmacy College Karad,*
F *2) Kishor Balkrishna Burade, then Professor, Pharmacy College Karad has been realized as accused in the present crime. Investigation officer collect sufficient evidence against both the accused, but both the accused are from Govt. Technical Education department Class 1 Public Servant, so*
G *before filing charge sheet against them he wrote the letter to the senior office of the accused u/s 197 of Cr.P.C. to take the permission at that time Mr. Subhash Kashinath Mahajan was working as incharge director of the office. Today also he is working as same post. Mr. Mahajan does not belongs to S.C. & S.T. but he knew that I belongs to S.C. and S.T.*

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In fact both the accused involved in crime No. 3122/09 are working on class 1 post and to file a charge sheet against them the permission has to be taken according to Cr.P.C. Section 197. This fact known to Shri Mahajan and Mr. Mahajan knew that this office did not have such right to give permission. So Mr. Mahajan send letter to Mumbai Office. Infact to give the required permission or to refuse the permission is not comes under the jurisdiction of incharge direction, Technical Education Mumbai. But, Mr. Mahajan misused his powers so that, accused may be benefited, he took the decision and refused the permission to file the charge sheet against the accused. So that, investigation officer Shri Bharat Tangade fails to submit the charge sheet against the both the accused, but he complain to submit 'C' summary report."

6. The appellant, after he was granted anticipatory bail, applied to the High Court under Section 482 Cr.P.C. for quashing the proceedings on the ground that he had merely passed a bonafide administrative order in his official capacity. His action in doing so cannot amount to an offence, even if the order was erroneous. The High Court rejected the petition.

7. Dealing with the contention that if such cases are not quashed, recording of genuine adverse remarks against an employee who is a member of SC/ST or passing a legitimate administrative order in discharge of official duties will become difficult and jeopardise the administration, the High Court observed that no public servant or reviewing authority need to apprehend any action by way of false or frivolous prosecution but the penal provisions of the Atrocities Act could not be faulted merely because of possibility of abuse. It was observed that in the facts and circumstances, inherent power to quash could not be exercised as it may send a wrong signal to the downtrodden and backward sections of the society.

8. We have heard Shri Amrendra Sharan, learned senior counsel, appearing as amicus, Shri Maninder Singh, learned Additional Solicitor General, appearing for the Union of India, Shri C.U. Singh, learned senior counsel and the other learned counsel appearing for the intervenors and learned counsel for the parties and perused the record.

9. We may refer to the submissions put forward before the Court:

A **Submissions of learned Amicus**

10. Learned amicus submitted that in facts of the present case, no offence was made out under Sections 3(1)(ix), 3(2)(vi) and 3(2)(vii) of the Atrocities Act and Sections 182, 192, 193, 203 and 219 of the Indian Penal Code and, thus, the High Court ought to have quashed the B proceedings. He submitted the following table to explain his point:

Provisions of the SC/ST Act invoked in this case	**Applicability of the provisions in the facts of the case**
3. *Punishment for offences atrocities. – 3 [(1)* Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, - **(ix):** gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;	The provision mandates a "false and frivolous information given by the public servant", however in the present case, the Petitioner has denied sanction for prosecution which clearly does not amount to false or frivolous information. Thus, a case under Section 3(1)(ix) of the SC/ST Act is not made out.
3(2)(vi): knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence;	Section 3(2)(vi) requires causing of disappearance of evidence with the intention of screening the offender from legal punishment, however, in the present case, there is no allegation that the petitioner has caused disappearance of any evidence. Therefore the ingredients of Sections 3(2)(vi) is not made out.
(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.	Since no offence under section 3 of the SCST is made out this section cannot be attracted.

Provisions of IPC alleged	**Applicability of the provisions in the facts of instant case**
182. False information, with intent to cause public servant to	A false information is an information which has been

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use his lawful power to the injury of another person. – Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant – (a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or (b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.	given deliberately with an intention to deceive. However, in this case denial of sanction for prosecution cannot be construed as a false information in any way. It is an order of administrative authority. Therefore no case is made out under Section 182 of the code.
192. Fabricating false evidence. –whoever causes any circumstance to exist or *[makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence".	The ingredients of Section 192 IPC is not made out therefore this section will not apply in the present case. It was not a judicial proceeding and the petitioner has neither fabricated false evidence nor made any false entry in any book, record or electronic data. Mere exercising of administrative power cannot be construed as fabricating false evidence.

193. Punishment for false evidence. – Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, an shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable.	Since there was no 'false evidence', therefore the possibility of punishment accruing to false evidence is ruled out.
203. Giving false information respecting an offence committed. – Whoever knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.	For the reasons already stated hereinabove, the present case does not meet the ingredients of this section, therefore is precluded from being prosecuted here. A mere opinion of a senior officer in an ACR does not amount to giving false information.
219. Public servant in judicial proceeding corruptly making report, etc., contrary to law. – Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.	The denial of sanction to prosecute the two government servants against whom the Complainant/ Respondent no. 2 had originally filed an FIR cannot be construed as making corrupt report therefore the case of the petitioner does not fall within the ambit of this provision.

11. It was submitted by learned amicus that FIR was lodged after five years of the order passed by the appellant. The order was passed on 20th January, 2011 while the FIR was lodged on 28th March, 2016 which further strengthened the case for quashing in addition to the facts and legal contentions noted in the previous para. Moreover, in absence of any allegation of malafides, even if order passed by the appellant was erroneous proceedings against him are not called for.

12. Learned amicus submitted that under the scheme of the Atrocities Act, several offences may solely depend upon the version of the complainant which may not be found to be true. There may not be any other tangible material. One sided version, before trial, cannot displace the presumption of innocence. Such version may at times be self serving and for extraneous reason. Jeopardising liberty of a person on an untried unilateral version, without any verification or tangible material, is against the fundamental rights guaranteed under the Constitution. Before liberty of a person is taken away, there has to be fair, reasonable and just procedure. Referring to Section 41(1)(b) Cr.P.C. it was submitted that arrest could be effected only if there was 'credible' information and only if the police officer had 'reason to believe' that the offence had been committed and that such arrest was necessary. Thus, the power of arrest should be exercised only after complying with the safeguards intended under Sections 41 and 41A Cr.P.C. It was submitted that the expression 'reason to believe' in Section 41 Cr.P.C. had to be read in the light of Section 26 IPC and judgments interpreting the said expression. The said expression was not at par with suspicion. Reference has been made in this regard to ***Joti Prasad versus State of Haryana***[1]***, Badan Singh @ Baddo versus State of U.P. & Ors.***[2]***, Adri Dharan Das versus State of West Bengal***[3]***, Tata Chemicals Ltd. versus Commissioner of Customs***[4] and ***Ganga Saran & Sons Pvt. Ltd. versus Income Tax Officer & Ors.***[5] In the present context, to balance the right of liberty of the accused guaranteed under Article 21, which could be taken away only by just fair and reasonable procedure and to check abuse of power by police and injustice to a citizen, exercise of right of arrest was required to be suitably regulated by way of guidelines by this Court under Article 32 read with Article 141 of the Constitution. Some

[1] 1993 Supp (2) SCC 497
[2] 2002 CriLJ 1392
[3] (2005) 4 SCC 303
[4] (2015) 11 SCC 628
[5] (1981) 3 SCC 143

A filters were required to be incorporated to meet the mandate of Articles 14 and 21 to strengthen the rule of law.

13. Learned amicus submitted that this Court has generally acknowledged the misuse of power of arrest and directed that arrest should not be mechanical. It has been laid down that the exercise of power of arrest requires reasonable belief about a person's complicity and also about need to effect arrest. Reliance has been placed on ***Joginder Kumar versus State of U.P.[6], M.C. Abraham versus State of Maharashtra[7], D. Venkatasubramaniam versus M. K. Mohan Krishnamachari[8], Arnesh Kumar versus State of Bihar[9]*** and ***Rini Johar & Ors. versus State of M.P. & Ors.[10]***

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14. It was submitted that in the context of the Atrocities Act, in the absence of tangible material to support a version, to prevent exercise of arbitrary power of arrest, a preliminary enquiry may be made mandatory. Reasons should be required to be recorded that information was credible and arrest was necessary. In the case of public servant, approval of disciplinary authority should be obtained and in other cases approval of Superintendent of Police should be necessary. While granting such permission, based on a preliminary enquiry, the authority granting permission should be satisfied about credibility of the information and also about need for arrest. If an arrest is effected, while granting remand, the Magistrate must pass a speaking order as to correctness or otherwise of the reasons for which arrest is effected. These requirements will enforce right of concerned citizens under Articles 14 and 21 without in any manner affecting genuine objects of the Act.

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15. Learned amicus further submitted that Section 18 of the Atrocities Act, which excludes Section 438 Cr.P.C., violates constitutional mandate under Articles 14 and 21 and is *ultra vires* the Constitution. The said provision was upheld in ***State of M. P. versus Ram Krishna Balothia[11]*** but the said judgment was in ignorance of the Constitution Bench judgment in ***Gurbaksh Singh Sibbia etc. versus State of Punjab[12]***. If a Court is not debarred from granting anticipatory bail

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G [6] (1994) 4 SCC 260
[7] (2003) 2 SCC 649
[8] (2009) 10 SCC 488
[9] (2014) 8 SCC 273
[10] (2016) 11 SCC 703
[11] (1995) 3 SCC 221
[12] (1980) 2 SCC 565

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even in most heinous offences including murder, rape, dacoity, robbery, NDPS, sedition etc., which are punishable with longer periods depending upon parameters for grant of anticipatory bail, taking away such power in respect of offences under the Act is discriminatory and violative of Article 14. Exclusion of court's jurisdiction, even where the court is satisfied that arrest of a person was not called for, has no nexus with the object of the Atrocities Act. In this regard, reliance has been placed on following observations in ***Sibbia*** (supra).

> ***"10.*** *Shri V.M. Tarkunde, appearing on behalf of some of the appellants, while supporting the contentions of the other appellants, said that since the denial of bail amounts to deprivation of personal liberty, courts should lean against the imposition of unnecessary restrictions on the scope of Section 438, when no such restrictions are imposed by the legislature in the terms of that section. The learned Counsel added a new dimension to the argument by invoking Article 21 of the Constitution. He urged that Section 438 is a procedural provision which is concerned with the personal liberty of an individual who has not been convicted of the offence in respect of which he seeks bail and who must therefore be presumed to be innocent. The validity of that section must accordingly be examined by the test of fairness and reasonableness which is implicit in Article 21. If the legislature itself were to impose an unreasonable restriction on the grant of anticipatory bail, such a restriction could have been struck down as being violative of Article 21. Therefore, while determining the scope of Section 438, the court should not impose any unfair or unreasonable limitation on the individual's right to obtain an order of anticipatory bail. Imposition of an unfair or unreasonable limitation, according to the learned Counsel, would be violative of Article 21, irrespective of whether it is imposed by legislation or by judicial decision.*
>
> ***13.*** *... ...The High Court and the Court of Session to whom the application for anticipatory bail is made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such conditions as the case may warrant. ....*

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21. *.... ...A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. ...*

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26. *We find a great deal of substance in Mr. Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in Maneka Gandhi (1978) 1 SCC 248, that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein."*

16. Reliance has also placed on recent judgment of this Court in ***Nikesh Tarachand Shah versus Union of India and Anr.***[13] declaring Section 45 of the Prevention of Money Laundering Act, 2002 unconstitutional. This Court held that fetters on grant of bail under the said provision when such fetters were not applicable to other offences punishable in like manners was discriminatory and against the principle of fair just and reasonable procedure.

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[13] (2017) 13 Scale 609, 2017 SCC OnLine SC 1355

Submissions of counsel for intervenor supporting the appeal

17. Ms. Manisha T. Karia, counsel appearing for intervenor on behalf of Sapna Korde @ Ketaki Ghodinde, who also claims to be victim of a false complaint, submitted that respondent No. 2 lodged a false FIR No. 3210 of 2017 dated 2nd November, 2017 against her at Khadki police station alleging that she, in collusion with the appellant herein, pressurized respondent no. 2 to withdraw the FIR No.164 of 2016 registered with Karad Police Station and she falsely implicated respondent no. 2 in a sexual harassment case. She is working as an Assistant Professor in the Department of Instrumentation and Control in College of Engineering, Pune since last eight years where respondent No. 2 was working as a storekeeper. She had made a complaint against him for her sexual harassment and as a reaction, the FIR was lodged by respondent No. 2 by way of the Atrocities Act. Her anticipatory bail application was rejected by the session court but the High Court, vide order dated 23rd November, 2017, granted interim protection against arrest. Thereafter, respondent No. 2 initiated proceedings under Section 107 Cr.P.C. and the intervenor received notice dated 2nd December, 2017 from the Magistrate. It was submitted that there was no safeguard against false implication, undue harassment and uncalled for arrest and thus, this Court must incorporate safeguards against unreasonable and arbitrary power of arrest in such cases without following just fair and reasonable procedure which may be laid down by this Court. Such requirement, it was submitted, was implicit requirement of law but was not being followed.

18. Laying down safeguards to enforce constitutional guarantee under Article 21 was necessary in view of the Sixth Report dated 19th December, 2014 of the Standing Committee on Social Justice and Empowerment (2014-15) on the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014 rejecting the stand of the Ministry to the effect that there was no need to provide for action against false or malafide implication under the Atrocities Act. It was observed therein:-

> *"3.9 The Committee are not inclined to accept the contention of the Ministry that those who are found to be misusing the provisions of the Act can be tried as per normal law of the land under the relevant sections of the IPC. The Committee are of the firm view that the PoA Act, being a special law, should be wholesome to the extent that it must contain an*

A *inbuilt provision for securing justice for those too who are falsely implicated with mala fide under it. More so, when the law makers have shown such perspicacity in addressing such issues/misgivings when they inserted clause 14 (Punishment for false or malicious complaint and false evidence) in 'The Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, 2013."*

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19. Thus, unless this Court laid down appropriate guidelines, there will be no protection available against arbitrary arrests or false implications in violation of Article 21 of the Constitution. The intervenor submitted that preliminary enquiry must be held before arrest with regard to the following factors:

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"a. Date and time of the incident and provocation.

b. Preexisting dispute between the parties or rivalry.

c. Gravity of the issue involved.

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d. Nature of allegations by both the parties.

e. Necessary documents and evidence by the victim and accused to substantiate their case to be placed before committee.

E *f. The proceedings may be recorded to avoid allegations of bias and non-transparency."*

20. The following further safeguards have been suggested by the counsel for the intervenor:

F *"Arrest specifically in connection with offences under POA Act should only be made with the prior sanction of the Magistrate. However this may not apply in case arrest has to be made in connection with other offences under IPC. Further the gravity of offence also needs to be seen since most of the cases at the institutional level are only on the*

G *basis of mere altercations or action by the public servants in their official capacity.*

Secondly if the Accused under the POA Act surrenders with prior notice to the Public Prosecutor, then his bail Application should be considered on the same day and if not the regular

H *bail, then at the least interim bail should be granted in the*

interest of justice. This requirement may be read into Section 18 of the POA Act."

21. In support of the submission that courts have acknowledged the misuse of law, reliance has also been placed on the following Judgments:

(i) Judgment of the Madras High Court in ***Jones versus State***[14] wherein the High Court observed:

"This Court recently has brought to light the misuse of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against people of other community. This is another example of misuse of the Act. The purpose of bringing SC & ST Act is to put down the atrocities committed on the members of the scheduled castes and scheduled tribes. The law enforcing authorities must bear in mind that it cannot be misused to settle other disputes between the parties, which is alien to the provisions contemplated under the Act. An Act enacted for laudable purpose can also become unreasonable, when it is exercised overzealously by the enforcing authorities for extraneous reasons. It is for the authorities to guard against such misuse of power conferred on them."

(ii) Judgment of Gujarat High Court in ***Dr. N.T. Desai vs. State of Gujarat***[15] observing :

"But then having closely examined the complaint more particularly in the context and light of the backdrop of the peculiar facts situation highlighted by the petitioner leading ultimately to filing of the complaint, this Court prime facie at the very outset is at some doubt about the complainant's story and yet if it readily, mechanically like a gullible child accepts the allegations made in the complaint at its face value, it would be surely blundering and wandering away from the path of bail-justice, making itself readily available in the hands of the scheming complainant who on mere asking will get arrested accused on some false allegations of having committed non-bailable offence, under the Atrocity

[14] 2004 SCC OnLine Mad 922 : 2004 CriLJ 2755
[15] (1997) 2 GLR 942

Act, meaning thereby the Court rendering itself quite deaf, dumb and blind mortgaging its commonsense, ordinary prudence with no perception for justice, denying the rightful protection to the accused becoming ready pawn pliable in the hands of sometime scheming, unscrupulous complainants !!! This sort of a surrender to prima facie doubtful allegation in the complaint is not at all a judicial approach, if not unjudicial !! At the cost of repetition, I make it clear that these observations are only preliminary, at this stage only in peculiar background of the case highlighted by petitioner-accused and for that purpose may be even in future be so highlighted by the accused in some other cases to the satisfaction of the Court ! The reason is having regard to the basic cardinal tenets of the criminal jurisprudence more particularly in view of the peculiar circumstances highlighted by the accused which allegedly actuated complainant to victimise him, in case if ultimately at the end of trial what the accused has submitted in defence is accepted as probable or true and as a result, the accused is given a clean bill, holding that the complaint was nothing else but false, concoction by way of spite to wreck the personal vengeance then in that case what indeed would be the remedy and redresses in the hands of the petitioner, who in the instant case is Doctor by profession and for that purpose in other cases an innocent citizen? He stands not only stigmatised by filing of a false complaint against him but he shall stand further subjected to trial !! Not only that but before that even subjected to arrest before the public eye and taken to Special Court where only he could pray for bail ! Thus, subjected to all sort of agonies, pains and sufferings lowering his image and esteem in the eye of public because the Court when approached adopted the helpless attitude? Under such bewildering circumstances, what indeed would be the face of the Court and the fate of the Administration of Justice denying bail to some victimised innocent accused at crucial stage when he surrenders to the Court custody for the purpose?!! Should the Court proclaiming doing justice stand befooled at the hands of some mischievous complainant with head-down in shame !! Supposing for giving false evidence

before the Court, the complainant is ordered to be prosecuted, but then will such prosecutions of complainant bring back the damage already done to an innocent !! ***Bearing in mind this most embarrassing and excruciating situation created by the complainant when, this Court as a Constitutional functionary is duty bound to zealously protect the liberty of citizen, should it be helplessly watching and passively surrendering itself to sometimes prima facie ex-facie malicious complaint denying simple bail to the accused? In this regard, perhaps, it may be idly said that accused can be given compensation for the malicious prosecution and ultimate refusal of bail or anticipatory bail !! True, but then in that case what compensation can any Court would be in a position to give when the complainant is a person who is poor enough unable to pay a single pie?!! Not only that but in case complainant is rich and able to pay compensation then even can any monetary compensation ever adequately compensate the wrong accused suffered at the hands of the malicious complainant? It is here that the conscience of this Court stands pricked and terribly perturbed and indeed will have a sleepless night if what ought we do not know where the petitioner, in the facts and circumstances of the case be quite innocent and accordingly a needy consumer of bail justice and yet is unnecessarily subjected to arrest taken to the police custody and then before Court because of denial of bail to him at this stage !!"***

(iii) Dealing with the same issue, the Gujarat High Court in ***Dhiren Prafulbhai Shah versus State of Gujarat***[16] observed as under:

"48. In the course of my present sitting, I have come across various cases wherein the provisions of Atrocities Act are misused. I find that various complaints are filed immediately after elections, be it Panchayat, Municipal or Corporation, alleging offence under the Atrocities Act. I have no hesitation in saying that in most of the cases, it was found that the F.I.R.s/Complaints were filed only to settle the score with their opponents after defeat in the elections. I have also come across various cases, wherein, private civil disputes arising

[16] 2016 CriLJ 2217

out of property, monetary matters, dispute between an employee and employer, dispute between the subordinate and his superior - are given penal and the complaints are being filed either under Section 190 r/w. 200 or F.I.Rs. at the police station. The matter in hand is one another example of misuse of the Act. As observed by me earlier, the purpose of bringing SC and ST Act is to put-down the atrocities committed on the members of the Scheduled Castes and Scheduled Tribes. The law enforcing authorities must bear in mind that it cannot be misused to settle other disputes between the parties like the case one in hand, which is alien to the provisions contemplated under the laudable Act. An Act enacted for laudable purpose can also become unreasonable, when it is exercised over-zealously by the enforcing authorities for extraneous reasons. It is for the authorities to guard against such misuse of power conferred on them.

49. Passing mechanically orders by the Court of Magistrates in complaint and/or registration of the F.I.R. at the Police Station, which do not have any criminal element, causes great hardships, humiliation, inconvenience and harassment to the citizens. For no reasons the reputation of the citizen is put to stake as immediately after the said orders are passed, innocent citizens are turned as accused. One should not overlook the fact that there is Section-18 in the Atrocities Act, which imposes a bar so far as the grant of anticipatory bail is concerned, if the offence is one under the Atrocities Act. If a person is accused having committed murder, dacoity, rape, etc., he can pray for anticipatory bail under Section-438 of the Cr.P.C. on the ground that he is innocent and has been falsely involved, but if a person alleged to have committed an offence under the Atrocities Act, cannot pray for an anticipatory bail because of the bar of Section-18 of the Act, and he would get arrested. This is the reason for the authorities to guard against any misuse of the Provisions of the Atrocities Act."

(iv) Judgment of Gujarat High Court in ***Pankaj D Suthar versus State of Gujarat***[17] observing:

[17] (1992)1 GLR 405

*"4. ...**But then, what according to this Court is the most welcome step by way of collective wisdom of the Parliament in ushering social beneficial legislation cannot be permitted to be abused and converted into an instrument to blackmail to wreak some personal vengeance for settling and scoring personal vendetta or by way of some counter-blasts against opponents some public servants, as prima facie appears to have been done in the present case. The basic questions in such circumstances therefore are-Whether a torch which is lighted to dispel the darkness can it be permitted to set on fire the innocent surroundings? Whether a knife an instrument which is meant for saving human life by using the same in the course of operation by a surgeon, can it be permitted to be used in taking the life of some innocent?** The very same fundamental question arises in the facts and circumstances of this case also, viz., 'whether any statute like the present Atrocities Act, especially enacted for the purposes of protecting weaker sections of the society hailing from S.C. & S.T. communities can be permitted to be abused by conveniently converting the same into a weapon of wrecking personal vengeance on the opponents?' **The answer to this question is undoubtedly and obviously 'No'. Under such circumstances, if the Courts are to apply such provision of Section 18 of the Atrocities Act quite mechanically and blindly merely guided by some general and popular prejudices based on some words and tricky accusations in the complaint on mere assumptions without intelligently scrutinising and testing the probabilities, truthfulness, genuineness and otherwise dependability of the accusations in the complaint etc., then it would be simply unwittingly and credulously playing in the hands of some scheming unscrupulous complainant in denying the justice.** Virtually, it would be tantamount to abdicating and relegating its judicial duty, function of doing justice in such matters in favour and hands of such unscrupulous complainant by making him a Judge in his own cause. This is simply unthinkable and therefore impermissible. **Whether the provisions of any particular Act and for that purpose the rules made thereunder are applicable to the facts of a*

A ***particular case or not, is always and unquestionably a matter which lies strictly and exclusively within the domain of 'judicial consideration-discretion' and therefore neither mere allegations made in the complainant by themselves nor bare denials by the accused can either automatically vest or divest the Court from discharging its ultimate judicial function-duty to closely scrutinise and test the prima facie dependability of the allegations made in the complaint and reach its own decision."***

(v) Judgment of Bombay High Court in ***Sharad versus State of Maharashtra***[18] observing :

"12. ***We hasten to add that such type of complaints for rampant misuse of the provisions of Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, are largely being filed particularly against Public Servants/quasi judicial/judicial officers with oblique motive for satisfaction of vested interests. We think the learned Members of the Bar have enormous social responsibility and obligation to ensure that the social fabric of the society is not damaged or ruined. They must ensure that exaggerated versions should not be reflected in the criminal complaints having the outrageous effect of independence of judicial and quasi judicial authorities so also the public servants. We cannot tolerate putting them in a spooked, chagrined and fearful state while performing their public duties and functions. We also think that a serious re-look at the provisions of the Act of 1989 which are being now largely misused is warranted by the Legislature, of course, on the basis of pragmatic realities and public opinion. A copy of this Judgment is directed to be sent to the Law Commission for information."***

22. It was, thus, submitted that above judgments are merely illustrations to show that the abuse of law was rampant. If mere accusations are treated as sufficient, it may unfairly damage the personal and professional reputation of a citizen. There is a need to balance the societal interest and peace on the one hand and the protection of rights of victims of such false allegations on the other. If allegations are against

[18] 2015(4) BomCR(Crl) 545

an employee, a committee should be formed in every department as follows:-

> *"i. The employer or Head of every institution may be directed to constitute an internal committee to look into the matters and specific grievances related to atrocities committed on the members of SC/ST. ……..*
>
> *ii. That before proceeding to lodge any FIR or criminal complaint, a written complaint should made to the internal committee of the institution along with supportive evidence.*
>
> *iii. Such committee may be given the power to conduct a preliminary inquiry into the matter by hearing both the parties and other evidence, so as to ascertain the existence of a prima facie case under the POA Act."*

23. It has been further suggested that Magistrate must verify the averments in a Complaint/FIR to ascertain whether a *prima facie* case is made out and whether arrest was necessary and only then arrest should be made or continued.

24. It is further submitted by the counsel for the intervenor that the Atrocities Act is also prone to misuse on account of monetary incentive being available merely for lodging a case under Rule 12(4) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. Such incentive may encourage not only genuine victims but, there being no safeguard even against a false case being registered only to get the monetary incentive, such false cases may be filed without any remedy to the affected person.

25. Reference has also been made to Annual Report 2016-2017 of the Ministry of Social Justice and Empowerment and data compiled by the Government of Maharashtra for the years 1990 to 2013 (dated 30th April, 2013) in respect of offences registered under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Protection of Civil Rights Act, 1955 against Maharashtra Members of Parliament, Member of Legislative Assembly, Zill Parishad Adhyaksha, Gramsevak, Talathi, B.D.O., Collector, Palakmantri, Chief Minister, Home Minister, IPS, IAS, IRS, IFS, MNP Commissioner, MNP Assistant Commissioner, other Government Officer/Servant, other non-Government Officers/ Servants (numeric data prepared on the basis of information available).

26. As per data (Crime in India 2016 – Statistics) compiled by the National Crime Records Bureau, Ministry of Home Affairs under the headings "***Police Disposal of Crime/Atrocities against SCs cases (State/UT-wise)-2016***" (Table 7A.4) and "***Police Disposal of Crime/ Atrocities against STs Cases (State/UT-wise) – 2016"*** (Table 7C.4) it is mentioned that in the year 2016, 5347 cases were found to be false cases out of the investigated out of SC cases and 912 were found to be false cases out of ST cases. It was pointed out that in the year 2015, out of 15638 cases decided by the courts, 11024 cases resulted in acquittal or discharge, 495 cases were withdrawn and 4119 cases resulted in conviction. (**Reference**: Annual Report 2016-2017 published by the Department of Social Justice & Empowerment, Ministry of Social Justice and Empowerment, Government of India).

Interventions against the appellant

27. Intervention application has also been filed by one Ananda Sakharam Jadhav who claims to be convenor of the Bahujan Karmachari Kalyan Sangh. Shri C.U. Singh, learned senior counsel appearing for the said intervenor, submitted that where law is clear no guideline should be issued by the Court. Reliance has been placed on ***State of Jharkhand and Anr. Versus Govind Singh***[19] and ***Rohitash Kumar and Ors versus Om Prakash Sharma and Ors.***[20] It was submitted that this Court could not lay down guidelines in the nature of legislation.

28. Shri C.U. Singh submitted that the Section 18 of the Atrocities Act has already been upheld in ***Balothia*** (supra) and ***Manju Devi versus Onkarjit Singh Ahluwalia***[21]. He also relied upon Statement of Objects and Reasons of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2013 dated 14th July, 2014. Therein it is stated that there are procedural hurdles such as non-registration of cases, procedural delays in investigation, arrests and filing of charge-sheets and delays in trial and low conviction rate on account of which in spite of deterrent provisions, atrocities against SC/ST continues at disturbing level which necessitated amendment in the Act.

29. Further intervention has been sought by one Yogendra Mohan Harsh. Learned counsel for the said intervenor submitted that atrocities

[19] (2005)10 SCC 437

[20] (2013)11 SCC 451

[21] (2017) 13 SCC 439

against SCs and STs are increasing and if submissions of *amicus* are to be accepted, the Act will be rendered ineffective and teethless.

Submissions of learned Additional Solicitor General (ASG)

30. Learned ASG submitted that in view of decisions in ***Balothia*** (supra) and ***Manju Devi*** (supra) there is no occasion to go into the issue of validity of provisions of the Atrocities Act. He also submitted that decisions of this Court in ***Vilas Pandurang Pawar and Anr. versus State of Maharashtra and Ors.***[22] and ***Shakuntla Devi versus Baljinder Singh***[23] permit grant of anticipatory bail if no *prima facie* case is made out. Thus, in genuine cases anticipatory bail can be granted. He also submitted that the Government of India had issued advisories on 3rd February, 2005, 1st April, 2010 and 23rd May, 2016 and also further amended the Atrocities Act vide Amendment Act No. 1 of 2016 which provides for creation of Special Courts as well as Exclusive Special Courts. Referring to the data submitted by the National Crime Records Bureau (NCRB) it was further submitted that out of the total number of complaints investigated by the police in the year 2015, both for the persons belonging to the SC category and also belonging to the ST category, in almost 15-16% cases, the competent police authorities had filed closure reports. Out of the cases disposed of by the courts in 2015, more than 75% cases have resulted in acquittal/withdrawal or compounding of the cases. It was submitted that certain complaints were received alleging misuse of the Atrocities Act and a question was also raised in Parliament as to what punishment should be given against false cases. The reply given was that awarding punishment to members of SCs and STs for false implication would be against the spirit of the Act. A press statement dated 19th March, 2015 was issued by the Central Government to the effect that in case of false cases, relevant Sections of IPC can be invoked. It was submitted that no guideline should be laid down by this Court which may be legislative in nature.

Consideration of the issue whether directions can be issued by this Court to protect fundamental right under Article 21 against uncalled for false implication and arrests

31. We may, at the outset, observe that jurisdiction of this Court to issue appropriate orders or directions for enforcement of fundamental

[22] (2012) 8 SCC 795
[23] (2014) 15 SCC 521

A rights is a basic feature of the Constitution. This Court, as the ultimate interpreter of the Constitution, has to uphold the constitutional rights and values. Articles 14, 19 and 21 represent the foundational values which form the basis of the rule of law. Contents of the said rights have to be interpreted in a manner which enables the citizens to enjoy the said rights. Right to equality and life and liberty have to be protected against
B any unreasonable procedure, even if it is enacted by the legislature. The substantive as well as procedural laws must conform to Articles 14 and 21. Any abrogation of the said rights has to be nullified by this Court by appropriate orders or directions. Power of the legislature has to be exercised consistent with the fundamental rights. Enforcement of a
C legislation has also to be consistent with the fundamental rights. Undoubtedly, this Court has jurisdiction to enforce the fundamental rights of life and liberty against any executive or legislative action. The expression 'procedure established by law' under Article 21 implies just, fair and reasonable procedure[24].

D 32. This Court is not expected to adopt a passive or negative role and remain bystander or a spectator if violation of rights is observed. It is necessary to fashion new tools and strategies so as to check injustice and violation of fundamental rights. No procedural technicality can stand in the way of enforcement of fundamental rights[25]. There are enumerable
E decisions of this Court where this approach has been adopted and directions issued with a view to enforce fundamental rights which may sometimes be perceived as legislative in nature. Such directions can certainly be issued and continued till an appropriate legislation is enacted[26]. Role of this Court travels beyond merely dispute settling and directions can certainly be issued which are not directly in conflict with a valid
F statute[27]. Power to declare law carries with it, within the limits of duty, to make law when none exists[28].

33. Constitution Bench of this Court in ***Union of India versus Raghubir Singh[29],*** observed :

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[24] Maneka Gandhi vs. UOI (1978) 1 SCC 248, paras 82 to 85

G [25] Bandhua Mukti Morcha vs. UOI (1984) 3 SCC 161, para 13

[26] Vishakha versus State of Rajasthan (1997) 6 SCC 241, para 16; Lakshmi Kant Pandey v. UOI (1983) 2 SCC 244; Common Cause v. UOI (1996) 1 SCC 753; M.C. Mehta v. State of T.N. (1996) 6 SCC 756

[27] Supreme Court Bar Asson. V. UOI (1998) 4 SCC 409, para 48

[28] Dayaram vs. Sudhir Batham (2012) 1 SCC 333, para 18

H [29] (1989(2) SCC 754

"7. ... It used to be disputed that Judges make law. Today, it is no longer a matter of doubt that a substantial volume of the law governing the lives of citizens and regulating the functions of the State flows from the decisions of the superior Courts. "There was a time," observed Lord Reid, "When it was thought almost indecent to suggest that Judges make law - They only declare it.... But we do not believe in fairly tales any more." "The Judge as Law Maker", p. 22. In countries such as the United Kingdom, where Parliament as the legislative organ is supreme and stands at the apex of the constitutional structure of the State, the role played by judicial law-making is limited.

In the first place the function of the Courts is restricted to the interpretation of laws made by Parliament, and the Courts have no power to question the validity of Parliamentary statutes, the Diceyan dictum holding true that the British Parliament is paramount and all powerful. In the second place, the law enunciated in every decision of the Courts in England can be superseded by an Act of Parliament. As Cockburn C.J. observed in Exp. Canon Selwyn (1872) 36 JP Jo 54:

There is no judicial body in the country by which the validity of an Act of Parliament could be questioned. An act of the Legislature is superior in authority to any Court of Law.

And Ungoed Thomas J., in Cheney v. Conn, (1968) 1 All ER 779 referred to a Parliamentary statute as "the highest form of law...which prevails over every other form of law." The position is substantially different under a written Constitution such as the one which governs us. The Constitution of India, which represents the Supreme Law of the land, envisages three distinct organs of the State, each with its own distinctive functions, each a pillar of the State.

Broadly, while Parliament and the State Legislature fin India enact the law and the Executive Government implements it, the judiciary sits in judgment not only on the implementation of the law by the Executive but also on the validity of the Legislation sought to be implemented One of the functions of the superior judiciary in India is to examine the

A *competence and validity of legislation, both in point of legislative competence as well as its consistency with the Fundamental Rights. In this regard, the Courts in India possess a power not known to the English Courts. Where a statute is declared invalid in India it cannot be reinstated unless constitutional sanction is obtained therefore by a constitutional amendment of an appropriately modified version of the statute is enacted which accords with constitutional prescription.*

The range of judicial, review recognised in the superior judiciary of India is perhaps the widest and the most extensive known to the world of law.

The power extends to examining the validity of even an amendment to the Constitution, for now it has been repeatedly held that no constitutional amendment can be sustained which [violates the basic structure of the Constitution. See Kesavananda Bharati Sripadagalayaru v. State of Kerala AIR1973SC1461), Smt. Indira Nehru. Gandhi v. Raj Narain [1976]2SCR347], Minerva Mills Ltd. v. Union of India [1981]1SCR206] and recently in S. P. Sampath Kumar v. Union of India [(1987)ILLJ128SC]. With this impressive expanse of judicial power, it is only right that the superior Courts in India should be conscious of the enormous responsibility which rests on them. This is specially true of the Supreme Court, for as the highest Court in the entire judicial system the law declared by it is, by Article 141 of the Constitution, binding on« all Courts within the territory of India."

34. The law has been summed up in a decision in ***Rajesh Kumar versus State***[30] as follows:

"62. Until the decision was rendered in Maneka Gandhi (supra), Article 21 was viewed by this Court as rarely embodying the Diceyian concept of rule of law that no one can be deprived of his personal liberty by an executive action unsupported by law. If there was a law which provided some sort of a procedure it was enough to deprive a person of his life or personal liberty. In this connection, if we refer to the example given by Justice S.R. Das in his judgment in A.K.

[30] (2011) 13 SCC 706

Gopalan (supra) that if the law provided the Bishop of Rochester 'be boiled in oil' it would be valid under Article 21. But after the decision in Maneka Gandhi (supra) which marks a watershed in the development of constitutional law in our country, this Court, for the first time, took the view that Article 21 affords protection not only against the executive action but also against the legislation which deprives a person of his life and personal liberty unless the law for deprivation is reasonable, just and fair. and it was held that the concept of reasonableness runs like a golden thread through the entire fabric of the Constitution and it is not enough for the law to provide some semblance of a procedure. The procedure for depriving a person of his life and personal liberty must be eminently just, reasonable and fair and if challenged before the Court it is for the Court to determine whether such procedure is reasonable, just and fair and if the Court finds that it is not so, the Court will strike down the same."

35. Apart from the above, there are enumerable occasions when this Court has issued directions for enforcement of fundamental rights e.g., directions regarding functioning of caste scrutiny Committee[31]; directions to regulate appointment of law officers[32]; directions to regulate powers of this Court and High Courts in designating Senior Advocates[33]; guidelines have been issued for the welfare of a child accompanying his/her mother in imprisonment[34]; directions for checking trafficking of women and children[35]; for night shelters for the homeless[36]; directions to check malnutrition in children[37]; directions to provide medical assistance by Government run hospitals[38]; directions for protection of human rights of prisoners[39]; directions for speedy trial of under trials[40]. The list goes on.

[31] Madhuri Patil v. Tribal Development (1994) 6 SCC 241
[32] State of Punjab versus Brijeshwar Singh Chahal (2016) 1 SCC 1
[33] Indira Jaising versus Supreme Court of India (2017) 9 SCC 766
[34] R.D. Upadhyay versus State of A.P. (2007) 15 SCC 337
[35] Bachpan Bachao Andolan v. UOI (2011) 5 SCC 1
[36] Union for Civil Liberties versus UOI (2010)5 SCC 318
[37] People's Union for Civil Liberties versus UOI (2004) 12 SCC 104 and (2010) 15 SCC 57
[38] Paschim Banga Khet Mazdoor Samity versus State of W.B. (1996) 4 SCC 37
[39] Sunil Batra versus Delhi Admn. (1978) 4 SCC 494
[40] Hussainara Khatoon (IV) versus Home Secy. State of Bihar (1980) 1 SCC 98

A 36. Issuance of directions to regulate the power of arrest has also been the subject matter of decisions of this Court. In ***Joginder Kumar versus State of U.P.***[41]**,** this Court observed that horizon of human rights is expanding. There are complaints of violation of human rights because of indiscriminate arrests. The law of arrest is of balancing individual rights, liberties and privileges, duties, obligations and
B responsibilities. On the one side is the social need to check a crime, on the other there is social need for protection of liberty, oppression and abuse by the police and the other law enforcing agencies. This Court noted the 3rd Report of the National Police Commission to the effect that power of arrest was one of the chief sources of corruption of police.
C 60% of arrests were unnecessary or unjustified. The arrest could be justified only in grave offences to inspire the confidence of the victim, to check the accused from committing further crime and to prevent him from absconding. The National Police Commission recommended that the police officer making arrest should record reasons. This Court observed that no arrest can be made merely because it is lawful to do
D so. The exercise of power must be for a valid purpose. Except in heinous offences arrest must be avoided. This requirement was read into Article 21[42]. ***In Arnesh Kumar versus State of Bihar***[43], this Court observed that arrest brings humiliation, curtails freedom and casts scars forever. It is considered a tool for harassment and oppression. The drastic power
E is to be exercised with caution. Power of arrest is a lucrative source of corruption. Referring to the amendment of law in Section 41 Cr.P.C., in the light of recommendations of the Law Commissions, it was directed that arrest may be justified only if there is 'credible information' or 'reasonable suspicion' and if arrest was necessary to prevent further
F offence or for proper investigation or to check interference with the evidence. Reasons are required to be recorded. However, compliance on the ground is far from satisfactory for obvious reasons. The scrutiny by the Magistrates is also not adequate. This Court issued the following directions:

> ***"11.*** *Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily*
G *and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:*

[41] (1994) 4 SCC 260

[42] Para 21

H [43] (2014) 8 SCC 273

11.1. *All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;*

11.2. *All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);*

11.3. *The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;*

11.4. *The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;*

11.5. *The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;*

11.6. *Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;*

11.7. *Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.*

11.8. *Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court."*

37. In ***D.K. Basu versus State of W.B***.[44], this Court, to check abuse of arrest and drastic police power, directed as follows:

> ***"35.*** *We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:*
>
> *(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.*
>
> *(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the* 436 *family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.*
>
> *(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.*
>
> *(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.*
>
> *(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.*

[44] (1997) 1 SCC 416

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

***36.** Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.*

A *37. The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier."*

B 38. In ***Rini Johar*** (supra) this Court considered the issue of wrongful arrest and payment of compensation. It was observed that wrongful arrest violates Article 21 of the Constitution and thus the victim of arrest was entitled to compensation. This Court noted the observations and guidelines laid down against wrongful arrests in ***Joginder Kumar*** (supra), ***D.K. Basu*** (supra), ***Arnesh Kumar*** (supra) and other cases C and held that since the arrest is in violation of guidelines laid down by this Court and is violative of Article 21, the person arrested was entitled to compensation.

39. In ***Subramanian Swamy versus UOI***[45]**,** this Court considered the issue of validity of provisions creating defamation as an D offence. In the course of said judgment, need for harmony in competing claims of different interests was considered. This Court observed that the fundamental rights are all parts of an integrated scheme and their waters must mix to constitute grand flow of impartial justice[46]. This Court also observed that legislation should not invade the rights and should E not smack of arbitrariness. Considering the principles of reasonableness, this Court observed that ultimate impact of rights has to be determined. This was different from abuse or misuse of legislation. Proportionality of restraint has to be kept in mind while determining constitutionality. Concept of public interest and social interest determine the needs of the society[47]. After referring to ***Maneka Gandhi (supra),*** it was observed F that it is the duty of this Court to strike a balance in the right of speech and right to protect reputation[48]. The restriction of law should be rational and connected to the purpose for which it is necessary. It should not be arbitrary or excessive[49].

40. Again this Court in ***Siddharam Satlingappa Mhetre versus State of Maharashtra***[50] laid down parameters for exercise of discretion G

[45] (2016) 7 SCC 221
[46] Para 137
[47] Para 130
[48] Para 144
[49] Para 194 and 195
H [50] (2011) 1 SCC 694

of anticipatory bail having regard to the fundamental right of liberty under Article 21 of the Constitution and the needs of the society where such liberty may be required to be taken away. It was observed:

> ***"Relevance and importance of personal liberty***
>
> ***36.*** *All human beings are born with some unalienable rights like life, liberty and pursuit of happiness. The importance of these natural rights can be found in the fact that these are fundamental for their proper existence and no other right can be enjoyed without the presence of right to life and liberty. Life bereft of liberty would be without honour and dignity and it would lose all significance and meaning and the life itself would not be worth living. That is why "liberty" is called the very quintessence of a civilised existence. ...*
>
> ***52.*** *The fundamental rights represent the basic values enriched by the people of this country. The aim behind having elementary right of the individual such as the Right to Life and Liberty is not fulfilled as desired by the Framers of the Constitution. It is to preserve and protect certain basic human rights against interference by the State. The inclusion of a chapter in the Constitution is in accordance with the trends of modern democratic thought. The object is to ensure the inviolability of certain essential rights against political vicissitudes. ...*
>
> ***54.*** *Life and personal liberty are the most prized possessions of an individual. The inner urge for freedom is a natural phenomenon of every human being. Respect for life, liberty and property is not merely a norm or a policy of the State but an essential requirement of any civilised society.*
>
> ***64.*** *The object of Article 21 is to prevent encroachment upon personal liberty in any manner. Article 21 is repository of all human rights essential for a person or a citizen. A fruitful and meaningful life presupposes life full of dignity, honour, health and welfare. In the modern "Welfare Philosophy", it is for the State to ensure these essentials of life to all its citizens, and if possible to non-citizens. While invoking the provisions of Article 21, and by referring to the oftquoted statement of Joseph Addison, "Better to die ten thousand*

A *deaths than wound my honour", the Apex Court in Khedat Mazdoor Chetna Sangath v. State of M.P. (1994) 6 SCC 260 posed to itself a question "If dignity or honour vanishes what remains of life?" This is the significance of the Right to Life and Personal Liberty guaranteed under the Constitution of India in its Third Part. ...*

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International Charters

Universal Declaration of Human Rights, 1948

80. *Article 3 of the Universal Declaration says:*

C *"3. Everyone has the right to life, liberty and security of person."*

Article 9 provides:

"9. No one shall be subjected to arbitrary arrest, detention or exile."

D

Article 10 says:

"10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." [As to its legal effect, see M. v. United Nations & Belgium (1972) 45 Inter LR 446 (Inter LR at pp. 447, 451.)]

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86. *According to the Report of the National Police Commission, when the power of arrest is grossly abused and clearly violates the personal liberty of the people, as enshrined under Article 21 of the Constitution, then the courts need to take serious notice of it. When conviction rate is admittedly less than 10%, then the police should be slow in arresting the accused. The courts considering the bail application should try to maintain fine balance between the societal interest vis-à-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court.*

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87. *The complaint filed against the accused needs to be thoroughly examined including the aspect whether the*

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complainant has filed a false or frivolous complaint on earlier occasion. The court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

88. *The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.*

89. *It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided.*

90. *A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.*

110. *The Law Commission in July 2002 has severely criticised the police of our country for the arbitrary use of power of arrest which, the Commission said, is the result of the vast discretionary powers conferred upon them by this Code. The Commission expressed concern that there is no internal mechanism within the Police Department to prevent misuse of law in this manner and the stark reality that complaint*

lodged in this regard does not bring any result. The Commission intends to suggest amendments in the Criminal Procedure Code and has invited suggestions from various quarters. Reference is made in this article to the 41st Report of the Law Commission wherein the Commission saw "no justification" to require a person to submit to custody, remain in prison for some days and then apply for bail even when there are reasonable grounds for holding that the person accused of an offence is not likely to abscond or otherwise misuse his liberty. Discretionary power to order anticipatory bail is required to be exercised keeping in mind these sentiments and spirit of the judgments of this Court in Sibbia case (1980)2 SCC 565 and Joginder Kumar v. State of U.P.(1994)4 SCC 260.

112. *The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:*

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) 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;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the

accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a 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;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. *Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.*

114. *These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualise all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of the entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to*

exercise this jurisdiction only to the Judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the Court of Session or the High Court is always available.

Irrational and indiscriminate arrests are gross violation of human rights

115. *In Joginder Kumar case (supra) a three-Judge Bench of this Court has referred to the 3rd Report of the National Police Commission, in which it is mentioned that the quality of arrests by the police in India mentioned the power of arrest as one of the chief sources of corruption in the police. The Report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails.*

116. *Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.*

117. *In case, the State considers the following suggestions in proper perspective then perhaps it may not be necessary to curtail the personal liberty of the accused in a routine manner. These suggestions are only illustrative and not exhaustive:*

(1) Direct the accused to join the investigation and only when the accused does not cooperate with the investigating agency, then only the accused be arrested.

(2) Seize either the passport or such other related documents, such as, the title deeds of properties or the fixed deposit receipts/share certificates of the accused.

(3) Direct the accused to execute bonds.

(4) The accused may be directed to furnish sureties of a number of persons which according to the prosecution are necessary in view of the facts of the particular case.

(5) The accused be directed to furnish undertaking that he would not visit the place where the witnesses reside so that the possibility of tampering of evidence or otherwise influencing the course of justice can be avoided.

(6) Bank accounts be frozen for small duration during the investigation.

118. *In case the arrest is imperative, according to the facts of the case, in that event, the arresting officer must clearly record the reasons for the arrest of the accused before the arrest in the case diary, but in exceptional cases where it becomes imperative to arrest the accused immediately, the reasons be recorded in the case diary immediately after the arrest is made without loss of any time so that the court has an opportunity to properly consider the case for grant or refusal of bail in the light of reasons recorded by the arresting officer.*

119. *Exercise of jurisdiction under Section 438 CrPC is an extremely important judicial function of a Judge and must be entrusted to judicial officers with some experience and good track record. Both the individual and society have vital interest in orders passed by the courts in anticipatory bail applications.*

120. *It is imperative for the High Courts through its judicial academies to periodically organise workshops, symposiums, seminars and lectures by the experts to sensitise judicial officers, police officers and investigating officers so that they can properly comprehend the importance of personal liberty vis-à-vis social interests. They must learn to maintain fine balance between the personal liberty and the social interests"*

41. It is, thus, too late in the day to accept an objection that this Court may not issue any direction which may be perceived to be of legislative nature even if it is necessary to enforce fundamental rights under Articles 14 and 21 of the Constitution.

Further consideration of potential impact of working of Atrocities Act on spreading casteism

42. In the light of submissions made, it is necessary to express concern that working of the Atrocities Act should not result in perpetuating

A casteism which can have an adverse impact on integration of the society and the constitutional values. Such concern has also been expressed by this Court on several occasions. Secularism is a basic feature of the Constitution. Irrespective of caste or religion, the Constitution guarantees equality in its preamble as well as other provisions including Articles 14-16. The Constitution envisages a cohesive, unified and casteless society.

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43. Dr. B. R. Ambedkar, in his famous speech on 25th November, 1949, on conclusion of deliberations of the Constituent Assembly, stated:

> *"These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union*
> C *of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty*
> D *would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them. ....*
>
> ... ...
>
> E *In India there are castes. The castes are anti-national. In the first place because they bring about separation in social life. They are anti-national also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. For fraternity can be a fact only when there is a*
> F *nation. Without fraternity, equality and liberty will be no deeper than coats of paint."*

44. In ***Indra Sawhney and Ors versus Union of India and Ors.***[51] this Court observed:

> G *"339. Secularism is the basic feature of the Indian Constitution. It envisages a cohesive, unified and casteless society. The Constitution has completely obliterated the caste system and has assured equality before law. Reference to caste under Articles 15(2) and 16(2) is only to obliterate it.*

H [51] 1992 Supp(3) SCC 217

The prohibition on the ground of caste is total, the mandate is that never again in this country caste shall raise its head. Even access to shops on the ground of caste is prohibited. The progress of India has been from casteism to egalitarianism — from feudalism to freedom.

340. The caste system which has been put in the grave by the framers of the Constitution is trying to raise its ugly head in various forms. Caste poses a serious threat to the secularism and as a consequence to the integrity of the country. Those who do not learn from the events of history are doomed to suffer again. It is, therefore, of utmost importance for the people of India to adhere in letter and spirit to the Constitution which has moulded this country into a sovereign, socialist, secular democratic republic and has promised to secure to all its citizens justice, social, economic and political, equality of status and of opportunity."

45. In the Report of the National Commission to Review the Working of the Constitution one of the failures of the working of the Constitution noted was that the elections continued to be fought on caste lines. The said observations have been quoted in ***People's Union for Civil Liberties (PUCL) and Anr. Etc. versus Union of India and Anr.***[52] as follows:

"20. It is to be stated that similar views are expressed in the Report submitted in March 2002 by the National Commission to Review the Working of the Constitution appointed by the Union Government for reviewing the working of the Constitution. Relevant recommendations are as under:

"Successes and failures

4.4. During the last half-a-century, there have been thirteen general elections to the Lok Sabha and a much large number to various State Legislative Assemblies. We can take legitimate pride in that these have been successful and generally acknowledged to be free and fair. But, the experience has also brought to the fore many distortions,

[52] (2003)4 SCC 399

A *some very serious, generating a deep concern in many quarters.* ***There are constant references to the unhealthy role of money power, muscle power and mafia power and to criminalisation, corruption, communalism and casteism."***

B 46. The speech of the then Prime Minister Shri Atal Behari Vajpayee on this aspect was also noted in para 48 of the above judgment which is as follows:

"Mr Divan in course of his arguments, had raised some submissions on the subject — 'Criminalisation of Politics' C *and participation of criminals in the electoral process as candidates and in that connection, he had brought to our notice the order of the Election Commission of India dated 28-8-1997. ... — 'Whither Accountability', published in The Pioneer, Shri Atal Behari Vajpayee had called for a national debate on all the possible alternatives for systematic changes* D *to cleanse our democratic governing system of its present mess. He has expressed his dissatisfaction that neither Parliament nor the State Vidhan Sabhas are doing, with any degree of competence or commitment, what they are primarily meant to do: legislative function. According to him, barring* E *exceptions, those who get elected to these democratic institutions are neither trained, formally or informally, in law-making nor do they seem to have an inclination to develop the necessary knowledge and competence in their profession. He has further indicated that those individuals in society who are generally interested in serving the* F *electorate and performing legislative functions are finding it increasingly difficult to succeed in today's electoral system and* ***the electoral system has been almost totally subverted by money power, muscle power, and vote bank considerations of castes and communities.*** *Shri Vajpayee also had indicated* G *that the corruption in the governing structures has, therefore, corroded the very core of elective democracy. According to him, the certainty of scope of corruption in the governing structure has heightened opportunism and unscrupulousness among political parties, causing them to marry and divorce one another at will, seek opportunistic alliances and*

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coalitions often without the popular mandate. Yet they capture and survive in power due to inherent systematic flows. ***He further stated that casteism, corruption and politicisation have eroded the integrity and efficacy of our civil service structure also. The manifestos, policies, programmes of the political parties have lost meaning in the present system of governance due to lack of accountability."***

47. We are thus of the view that interpretation of the Atrocities Act should promote constitutional values of fraternity and integration of the society. This may require check on false implications of innocent citizens on caste lines.

Issue of anticipatory bail

48. In the light of the above, we first consider the question whether there is an absolute bar to the grant of anticipatory bail in which case the contention for revisiting the validity of the said provision may need consideration in the light of decisions of this Court relied upon by learned amicus.

49. Section 18 of the Atrocities Act containing bar against grant of anticipatory bail is as follows:

"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."

50. In ***Balothia*** (supra), Section 18 was held not to be violative of Articles 14 and 21 of the Constitution. It was observed that exclusion of Section 438 Cr.P.C. in connection with offences under the Act had to be viewed in the context of prevailing social conditions and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate the victims and prevent or obstruct them in the prosecution of these offenders, if they are granted anticipatory bail. Referring to the Statement of Objects and Reasons, it was observed that members of SC and ST are vulnerable and are denied number of civil rights and they are subjected to humiliation and harassment. They assert their rights and demand statutory protection. Vested interests try to cow them down and terrorise them. There was increase in disturbing trend of commission of atrocities against members of SC and ST. Thus, the persons who are

A alleged to have committed such offences can misuse their liberty, if anticipatory bail is granted. They can terrorise the victims and prevent investigation.

51. Though we find merit in the submission of learned amicus that judgment of this Court in ***Ram Krishna Balothia (supra)*** may B need to be revisited in view of judgments of this Court, particularly ***Maneka Gandhi*** (supra), we consider it unnecessary to refer the matter to the larger Bench as the judgment can be clarified in the light of law laid down by this Court. Exclusion of anticipatory bail has been justified only to protect victims of perpetrators of crime. It cannot be read as being applicable to those who are falsely implicated for extraneous C reasons and have not committed the offence on *prima facie* independent scrutiny. Access to justice being a fundamental right, grain has to be separated from the chaff, by an independent mechanism. Liberty of one citizen cannot be placed at the whim of another. Law has to protect the innocent and punish the guilty. Thus considered, exclusion has to be D applied to genuine cases and not to false ones. This will help in achieving the object of the law.

52. If the provisions of the Act are compared as against certain other enactments where similar restrictions are put on consideration of matter for grant of anticipatory bail or grant of regular bail, an interesting E situation emerges. Section 17(4) of the Terrorist and Disruptive Activities (Prevention) Act, 1985 ("TADA" for short - since repealed) stated "…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 punishable under the provisions of this Act…". Section 17(5) of the TADA Act put further restriction on a person accused of an F offence punishable under the TADA Act being released on regular bail and one of the conditions was: Where the Public Prosecutor opposes the application for grant of bail, the court had to be satisfied that there were reasonable grounds for believing that the accused was not guilty of such offence and that he was not likely to commit any such offence G while on bail. The provisions of the Unlawful Activities (Prevention) Act, 1967 (for short "the UAPA Act"), namely under Section 43D(4) and 43D(5) are similar to the aforesaid Sections 17(4) and 17(5) of the TADA Act. Similarly the provisions of Maharashtra Control of Organised Crime Act, 1999 (for short "MCOC Act"), namely, Sections 21(3) and 21(4) are also identical in terms. Thus the impact of release of a person H

accused of having committed the concerned offences under these special enactments was dealt with by the Legislature not only at the stage of consideration of the matter for anticipatory bail but even after the arrest at the stage of grant of regular bail as well. The provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act) are, however, distinct in that the restriction under Section 37 is at a stage where the matter is considered for grant of regular bail. No such restriction is thought of and put in place at the stage of consideration of matter for grant of anticipatory bail. On the other hand, the provisions of the Act are diametrically opposite and the restriction in Section 18 is only at the stage of consideration of matter for anticipatory bail and no such restriction is available while the matter is to be considered for grant of regular bail. Theoretically it is possible to say that an application under Section 438 of the Code may be rejected by the Court because of express restrictions in Section 18 of the Act but the very same court can grant bail under the provisions of Section 437 of the Code, immediately after the arrest. There seems to be no logical rationale behind this situation of putting a fetter on grant of anticipatory bail whereas there is no such prohibition in any way for grant of regular bail. It is, therefore, all the more necessary and important that the express exclusion under Section 18 of the Act is limited to genuine cases and inapplicable where no prima facie case is made out.

53. We have no quarrel with the proposition laid down in the said judgment that persons committing offences under the Atrocities Act ought not to be granted anticipatory bail in the same manner in which the anticipatory bail is granted in other cases punishable with similar sentence. Still, the question remains whether in cases where there is no *prima facie* case under the Act, bar under Section 18 operates can be considered. We are unable to read the said judgment as laying down that exclusion is applicable to such situations. If a person is able to show that, prima facie, he has not committed any atrocity against a member of SC and ST and that the allegation was *mala fide* and *prima facie* false and that prima facie no case was made out, we do not see any justification for applying Section 18 in such cases. Consideration in the mind of this Court in ***Balothia*** (supra) is that the perpetrators of atrocities should not be granted anticipatory bail so that they may not terrorise the victims. Consistent with this view, it can certainly be said that innocent persons against whom there was no *prima facie* case or patently false case

A cannot be subjected to the same treatment as the persons who are prima facie perpetrators of the crime.

54. In view of decisions in ***Vilas Pandurang Pawar (supra)*** and ***Shakuntla Devi (supra),*** learned ASG has rightly stated that there is no absolute bar to grant anticipatory bail if no prima facie case is made B out inspite of validity of Section 18 of the Atrocities Act being upheld.

55. In ***Hema Mishra versus State of U.P.***[53]***,*** it has been expressly laid down that inspite of the statutory bar against grant of anticipatory bail, a Constitutional Court is not debarred from exercising its jurisdiction to grant relief. This Court considered the issue of anticipatory bail where C such provision does not apply. Reference was made to the view in ***Lal Kamlendra Pratap Singh versus State of Uttar Pradesh and Ors.***[54] to the effect that interim bail can be granted even in such cases without accused being actually arrested. Reference was also made to ***Kartar Singh versus State of Punjab***[55] to the effect that jurisdiction under Article 226 is not barred even in such cases.

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56. It is well settled that a statute is to be read in the context of the background and its object. Instead of literal interpretation, the court may, in the present context, prefer purposive interpretation to achieve the object of law. Doctrine of proportionality is well known for advancing the object of Articles 14 and 21. A procedural penal provision affecting E liberty of citizen must be read consistent with the concept of fairness and reasonableness.

57. A Constitution Bench of this Court in ***Kedar Nath versus State of Bihar***[56] observed:

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> ***"26. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress [vide (1) Bengal Immunity Company Limited v. State of Bihar [1955 2 SCR 603] and*** G ***(2) R.M.D. Chamarbaugwala v. Union of India[1957 SCR 930]. Viewed in that light, we have no hesitation in so***

[53] (2014) 4 SCC 453 – paras 21, 34 to 36
[54] (2009) 4 SCC 437
[55] (1994) 3 SCC 569 – para 368 (17)
H [56] AIR 1962 SC 955 : 1962 Supp (2) SCR 769

construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.

27. We may also consider the legal position, as it should emerge, assuming that the main Section 124-A is capable of being construed in the literal sense in which the Judicial Committee of the Privy Council has construed it in the cases referred to above. *On that assumption, is it not open to this Court to construe the section in such a way as to avoid the alleged unconstitutionality by limiting the application of the section in the way in which the Federal Court intended to apply it? In our opinion, there are decisions of this Court which amply justify our taking that view of the legal position. This Court, in the case of R.M.D. Chamarbaugwalla v. Union of India has examined in detail the several decisions of this Court, as also of the courts in America and Australia. After examining those decisions, this Court came to the conclusion that if the impugned provisions of a law come within the constitutional powers of the legislature by adopting one view of the words of the impugned section or Act, the Court will take that view of the matter and limit its application accordingly, in preference to the view which would make it unconstitutional on another view of the interpretation of the words in question. In that case, the Court had to choose between a definition of the expression "Prize Competitions" as limited to those competitions which were of a gambling character and those which were not. The Court chose the former interpretation which made the rest of the provisions of the Act, Prize Competitions Act (42 of 1955), with particular reference to Sections 4 and 5 of the Act and Rules 11 and 12 framed thereunder, valid. The Court held that the penalty attached only to those competitions which involved the element of gambling and those competitions in which success depended to a substantial degree on skill were held to be out of the purview of the Act.* ***The ratio decidendi in that case, in our opinion, applied to the case in hand insofar as we propose to limit its operation only to such activities as come within the ambit of the observations of the Federal***

Court, that is to say, activities involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace."

58. In the present context, wisdom of legislature in creating an offence cannot be questioned but individual justice is a judicial function depending on facts. As a policy, anticipatory bail may be excluded but exclusion cannot be intended to apply where a patently malafide version is put forward. Courts have inherent jurisdiction to do justice and this jurisdiction cannot be intended to be excluded. Thus, exclusion of Court's jurisdiction is not to be read as absolute.

59. There can be no dispute with the proposition that mere unilateral allegation by any individual belonging to any caste, when such allegation is clearly motivated and false, cannot be treated as enough to deprive a person of his liberty without an independent scrutiny. Thus, exclusion of provision for anticipatory bail cannot possibly, by any reasonable interpretation, be treated as applicable when no case is made out or allegations are patently false or motivated. If this interpretation is not taken, it may be difficult for public servants to discharge their bona fide functions and, in given cases, they can be black mailed with the threat of a false case being registered under the Atrocities Act, without any protection of law. This cannot be the scenario in a civilized society. Similarly, even a non public servant can be black mailed to surrender his civil rights. This is not the intention of law. Such law cannot stand judicial scrutiny. It will fall foul of guaranteed fundamental rights of fair and reasonable procedure being followed if a person is deprived of life and liberty. Thus, literal interpretation cannot be preferred in the present situation.

60. Applying the above well known principle, we hold that the exclusion of Section 438 Cr.P.C. applies when a *prima facie* case of commission of offence under the Atrocities Act is made. On the other hand, if it can be shown that the allegations are *prima facie* motivated and false, such exclusion will not apply.

61. The Gujarat High Court in ***Pankaj D Suthar*** (supra) considered the question whether Section 18 of the Atrocities Act excludes grant of anticipatory bail when on *prima facie* judicial scrutiny, allegations are found to be not free from doubt. The said question was answered as follows:

*"**4. Now undoubtedly it is true that the alleged offence under the Atrocities Act is a very serious offence and if indeed the complaint is ultimately found to be truthful and genuine one, there cannot be any two views about the strictest possible view taken in such matter.** Not only that but if the complaint is also found to be prima facie dependable one that is to say, free from doubt, then as a warranted under Section 18 of the Atrocities Act, even the anticipatory bail to such accused has got to be refused. **In fact, the Parliament in its utmost wisdom has rightly evidenced great concern and anxiety over the atrocities which are going on unabatedly on S.Cs. & S.Ts. by inserting the provisions under Section 18 of the Atrocities Act disabling the accused from obtaining the anticipatory bail under Section 438 of the Code. This indeed is a welcome step and in accordance with the axiomatic truth, viz., 'the disease grown desperately must be treated desperately else not'.** The disease of commission of offences by way of atrocities against the members of S.Cs. and S.Ts. are unabatedly going on since last hundreds of years and in the recent past have become alarmingly increasing and has become so rampant, breath taking and has reached such a desperate pass that it indeed needed a very stringent and desperate legislation which could help save the situation by effectively providing the legal protection to such cursed, crushed and downtrodden members of S.Cs. & S.Ts. communities. Under such circumstances, it is equally the paramount duty of every Court to see that it responds to legislative concern and call and ensure effective implementation of the Atrocities Act, by seeing that the provisions enshrined in the said Act are duly complied with. **But then, what according to this Court is the most welcome step by way of collective wisdom of the Parliament in ushering social beneficial legislation cannot be permitted to be abused and converted into an instrument to blackmail to wreak some personal vengeance for settling and scoring personal vendetta or by way of some counter-blasts against opponents some public servants, as prima facie appears to have been done in the present case. The basic questions in such circumstances therefore are-Whether a torch which is*

A ***lighted to dispel the darkness can it be permitted to set on fire the innocent surroundings? Whether a knife an instrument which is meant for saving human life by using the same in the course of operation by a surgeon, can it be permitted to be used in taking the life of some innocent?*** *The*
B *very same fundamental question arises in the facts and circumstances of this case also, viz., 'whether any statute like the present Atrocities Act, especially enacted for the purposes of protecting weaker sections of the society hailing from S.C. & S.T. communities can be permitted to be abused by conveniently converting the same into a weapon of*
C *wrecking personal vengeance on the opponents?'* ***The answer to this question is undoubtedly and obviously 'No'. Under such circumstances, if the Courts are to apply such provision of Section 18 of the Atrocities Act quite mechanically and blindly merely guided by some general and popular prejudices based on some words and tricky accusations in the complaint on mere assumptions without intelligently scrutinising and testing the probabilities, truthfulness, genuineness and otherwise dependability of the accusations in the complaint etc., then it would be simply unwittingly and credulously playing in the hands of some***
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E ***scheming unscrupulous complainant in denying the justice.*** *Virtually, it would be tentamount to abdicating and relegating its judicial duty, fanction of doing justice in such matters in favour and hands of such unscrupulous complainant by making him a Judge in his own cause. This is simply*
F *unthinkable and therefore impermissible.* ***Whether the provisions of any particular Act and for that purpose the rules made thereunder are applicable to the facts of a particular case or not, is always and unquestionably a matter which lies strictly and exclusively within the domain of 'judicial consideration-discretion' and therefore neither mere***
G ***allegations made in the complainant by themselves nor bare denials by the accused can either automatically vest or divest the Court from discharging its ultimate judicial function-duty to closely scrutinise and test the prima facie dependability of the allegations made in the complaint and reach its own decision.***
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5. Now reverting to the contents of the complaint and attending circumstances high lighted by Mr. Pardiwala, the learned Advocate for the petitioner-accused, the same prima facie clearly demonstrates that at this stage the story revealed by the complainant docs not appear to be free from doubt. If that is so, very applicability of the Atrocities Act is rendered doubtful. If that is the situation, then to refuse the anticipatory bail on mere accusations and assumptions that the petitioner-accused has committed an offence under the Atrocities Act would be absolutely illegal, unjudicious, unjust and ultimately a travesty of justice. No Court can ever embark upon such hazards of refusing anticipatory bail on mere doubtful accusations and assumptions that Atrocities Act is applicable. No Court could and should be permitted to bo 'spoon-fed' by the complainant whatever he wants to feed and swallow whatever he wants the Court to gulp down to attain and secure his unjust mala fide motivated ends. ***Section 18 of the Atrocities Act gives a vision, direction and mandate to the Court as to the cases where the anticipatory bail must be refused, but it does not and it certainly cannot whisk away the right of any Court to have a prima facie judicial scrutiny of the allegations made in the complaint. Nor can it under its hunch permit provisions of law being abused to suit the mala fide motivated ends of some unscrupulous complainant. In this case also if indeed this Court been satisfied with the story revealed by the complainant as truthful and genuine, then anticipatory bail would have been surely rejected right forth as a matter of course, but since the submissions of Mr. Pardiwala have considerable force, this Court has no alternative but to accept the same in the larger interests of justice to see that merely on the count of the firsthand prejudice attempted to be caused by allegations in the complaint, the petitioner-accused is not denied his precious right of the anticipatory bail.***

6. In view of the aforesaid discussion, though in a way the learned A.P.P. is absolutely right when he submitted that no anticipatory bail can be granted to the petitioner-accused because of Section 18 of the Atrocities Act, in the opinion of this Court, his submission fails because at this stage it is too

A ***difficult to rule out the probability of the accusations levelled by the complainant against the petitioner-accused having committed an offence under the Atrocities Act being false, vexatious and by way of counterblast as stemming from the ulterior motive to humiliate, disgrace and demoralise the*** B ***petitioner-accused who is a public servant. When that is the result and position, there is no question of bypassing of Section 18 of the Atrocities Act arises as apprehended by the learned A.P.P. Taking into consideration the facts and circumstances of this particular case, and in view of the aforesaid discussion, this Misc. Criminal Application for*** C ***anticipatory bail deserves to be allowed and is allowed accordingly"***

62. The above view was reiterated in ***Dr. N.T. Desai*** (supra), after considering the judgment of this Court in ***Balothia*** (supra). It was observed that even taking Section 18 of the Atrocities Act to be valid, if D the Court, *prima-facie,* found the story of complainant to be doubtful, the accused could not be allowed to be arrested. Doing so would be unjudicial. It was observed;-

"8. To deal first with the preliminary objection raised by the learned A.P.P. Mr. Desai, it may be stated that the Supreme E ***Court's decision rendered in the case of State of M.P. & Anr. v. Ramkishan Balothia (supra) stands on altogether quite different footing where the vires of Section 18 of the Act came to be decided. The Apex Court has ultimately held that Section 18 of the Act was not ultra vires. This Court is indeed in respectful agreement with the aforesaid decision*** F ***of the Supreme Court ….. ….. …..***

….. ….. ….. …..

But then having closely examined the complaint more particularly in the context and light of the backdrop of the G ***peculiar facts situation highlighted by the petitioner leading ultimately to filing of the complaint, this Court prime facie at the very outset is at some doubt about the complainant's story and yet if it readily, mechanically like a gullible child accepts the allegations made in the complaint at its face value, it would be surely blundering and wandering away***

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from the path of bail-justice, making itself readily available in the hands of the scheming complainant who on mere asking will get arrested accused on some false allegations of having committed non-bailable offence, under the Atrocity Act, meaning thereby the Court rendering itself quite deaf, dumb and blind mortgaging its commonsense, ordinary prudence with no perception for justice, denying the rightful protection to the accused becoming ready pawn pliable in the hands of sometime scheming, unscrupulous complainants !!! This sort of a surrender to prima facie doubtful allegation in the complaint is not at all a judicial approach, if not unjudicial !!..."

63. The above judgments correctly lays down the scope of exclusion as well as permissibility of anticipatory bail in cases under the Atrocities Act and are consistent with the view we take. Section 18 of the Atrocities Act has, thus, to be read and interpreted in this manner. At this stage, we may note that we have seen a contra view of the Division Bench of the said High Court in ***Pravinchandra N Solanki and Ors. versus State of Gujarat***[57]***.*** We are unable to accept the said view for the reasons already given and overrule the same.

64. Concept of "Due process" and principles of 8th Amendment of the U.S. Constitution have been read by this Court as part of guarantee under Article 21 of the Constitution. In ***State of Punjab versus Dalbir Singh***[58], it was observed :

"80. *It has already been noted hereinabove that in our Constitution the concept of "due process" was incorporated in view of the judgment of this Court in Maneka Gandhi[(1978) 1 SCC 248] The principles of the Eighth Amendment have also been incorporated in our laws. This has been acknowledged by the Constitution Bench of this Court in Sunil Batra [(1978) 4 SCC 494] In Sunil Batra case, SCC para 52 at p. 518 of the Report, Krishna Iyer, J. speaking for the Bench held as follows:*

"52. True, our Constitution has no 'due process' clause or the Eighth Amendment; but, in this branch of law, after

[57] (2012)1 GLR 499

[58] (2012) 3 SCC 346

A *Cooper [Rustom Cavasjee Cooper vs. UOI (1970) 1 SCC 248] and Maneka Gandhi the consequence is the same. For what is punitively outrageous, scandalisingly unusual or cruel and rehabilitatively counterproductive, is unarguably unreasonable and arbitrary and is shot down by Articles 14 and 19 and if inflicted with procedural unfairness, falls foul of Article 21."*

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***84.** The principle of "due process" is an emanation from the Magna Carta doctrine. This was accepted in American jurisprudence (see Munn v. Illinois [24 L Ed77], L Ed p. 90 : US p. 142). Again this was acknowledged in Planned Parenthood of Southeastern Pennsylvania v. Casey [120 L Ed 2d 674] wherein the American Supreme Court observed as follows:*

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D *"The guarantees of due process, though having their roots in Magna Carta's 'per legem terrae' and considered as procedural safeguards 'against executive usurpation and tyranny', have in this country 'become bulwarks also against arbitrary legislation'."*

E ***85.** All these concepts of "due process" and the concept of a just, fair and reasonable law have been read by this Court into the guarantee under Articles 14 and 21 of the Constitution...."*

65. Presumption of innocence is a human right. No doubt, placing

F of burden of proof on accused in certain circumstances may be permissible but there cannot be presumption of guilt so as to deprive a person of his liberty without an opportunity before an independent forum or Court. In ***Noor Aga versus State of Punjab*[59]*,*** it was observed:

G ***"33.** Presumption of innocence is a human right as envisaged under Article 14(2) of the International Covenant on Civil and Political Rights. It, however, cannot per se be equated with the fundamental right and liberty adumbrated in Article 21 of the Constitution of India. It, having regard to the extent thereof, would not militate against other statutory provisions*

H [59] (2008) 16 SCC 417

(which, of course, must be read in the light of the constitutional guarantees as adumbrated in Articles 20 and 21 of the Constitution of India).

xxxx xxxx xxxx

35. *A right to be presumed innocent, subject to the establishment of certain foundational facts and burden of proof, to a certain extent, can be placed on an accused. It must be construed having regard to the other international conventions and having regard to the fact that it has been held to be constitutional. Thus, a statute may be constitutional but a prosecution thereunder may not be held to be one. Indisputably, civil liberties and rights of citizens must be upheld.*

xxxx xxxx xxxx

43. *The issue of reverse burden vis-à-vis the human rights regime must also be noticed. The approach of the common law is that it is the duty of the prosecution to prove a person guilty. Indisputably, this common law principle was subject to parliamentary legislation to the contrary. The concern now shown worldwide is that Parliaments had frequently been making inroads on the basic presumption of innocence. Unfortunately, unlike other countries no systematic study has been made in India as to how many offences are triable in the court where the legal burden is on the accused. In the United Kingdom it is stated that about 40% of the offences triable in the Crown Court appear to violate the presumption. (See "The Presumption of Innocence in English Criminal Law", 1996, CRIM. L. REV. 306, at p. 309.)*

44. *In Article 11(1) of the Universal Declaration of Human Rights (1948) it is stated:*

"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law...."

Similar provisions have been made in Article 6.2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and Article 14.2 of the International Covenant on Civil and Political Rights (1966).

A *Xxx xxxx xxx xxx*

47. *We may notice that Sachs, J. in State v. Coetzee [1997(2) LRC 593] explained the significance of the presumption of innocence in the following terms:*

B *"There is a paradox at the heart of all criminal procedure in that the more serious the crime and the greater the public interest in securing convictions of the guilty, the more important do constitutional protections of the accused become. The starting point of any balancing enquiry where constitutional rights are concerned must be that the public*

C *interest in ensuring that innocent people are not convicted and subjected to ignominy and heavy sentences massively outweighs the public interest in ensuring that a particular criminal is brought to book. ... Hence the presumption of innocence, which serves not only to protect a particular individual on trial, but to maintain public confidence in the*

D *enduring integrity and security of the legal system. Reference to the prevalence and severity of a certain crime therefore does not add anything new or special to the balancing exercise. The perniciousness of the offence is one of the givens, against which the presumption of innocence is pitted*

E *from the beginning, not a new element to be put into the scales as part of a justificatory balancing exercise. If this were not so, the ubiquity and ugliness argument could be used in relation to murder, rape, car-jacking, housebreaking, drug-smuggling, corruption ... the list is unfortunately almost endless, and nothing would be left of the presumption of*

F *innocence, save, perhaps, for its relic status as a doughty defender of rights in the most trivial of cases."*

In view of the above, an accused is certainly entitled to show to the Court, if he apprehends arrest, that case of the complainant was motivated. If it can be so shown there is no reason that the Court is not

G able to protect liberty of such a person. There cannot be any mandate under the law for arrest of an innocent. The law has to be interpreted accordingly.

66. We have already noted the working of the Act in the last three decades. It has been judicially acknowledged that there are

H instances of abuse of the Act by vested interests against political

opponents in Panchayat, Municipal or other elections, to settle private civil disputes arising out of property, monetary disputes, employment disputes and seniority disputes[60]. It may be noticed that by way of rampant misuse complaints are 'largely being *filed particularly against Public Servants/quasi judicial/judicial officers with oblique motive for satisfaction of vested interests'*[61].

67. Innocent citizens are termed as accused, which is not intended by the legislature. The legislature never intended to use the Atrocities Act as an instrument to blackmail or to wreak personal vengeance. The Act is also not intended to deter public servants from performing their *bona fide* duties. Thus, unless exclusion of anticipatory bail is limited to genuine cases and inapplicable to cases where there is no *prima facie* case was made out, there will be no protection available to innocent citizens. Thus, limiting the exclusion of anticipatory bail in such cases is essential for protection of fundamental right of life and liberty under Article 21 of the Constitution.

68. Accordingly, we have no hesitation in holding that exclusion of provision for anticipatory bail will not apply when no *prima facie* case is made out or the case is patently false or *mala fide.* This may have to be determined by the Court concerned in facts and circumstances of each case in exercise of its judicial discretion. In doing so, we are reiterating a well established principle of law that protection of innocent against abuse of law is part of inherent jurisdiction of the Court being part of access to justice and protection of liberty against any oppressive action such as *mala fide* arrest. In doing so, we are not diluting the efficacy of Section 18 in deserving cases where Court finds a case to be *prima facie* genuine warranting custodial interrogation and pre-trial arrest and detention.

69. In ***Lal Kamlendra Pratap***(supra)**,** this Court held that even if there is no provision for anticipatory bail, the Court can grant interim bail in suitable cases. It was observed :

> ***"6.*** *Learned counsel for the appellant apprehends that the appellant will be arrested as there is no provision for anticipatory bail in the State of U.P. He placed reliance on a decision of the Allahabad High Court in Amarawati v. State*

[60] Dhiren Praful bhai (supra)
[61] Sharad (supra)

A *of U.P. [2005 Crl LJ 755 (All)] in which a seven-Judge Full Bench of the Allahabad High Court held that the court, if it deems fit in the facts and circumstances of the case, may grant interim bail pending final disposal of the bail application. The Full Bench also observed that arrest is not a must whenever an FIR of a cognizable offence is lodged. The Full Bench placed reliance on the decision of this Court in Joginder Kumar v. State of U.P.[(1992) 4 SCC 260]*

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***7.** We fully agree with the view of the High Court in Amarawati case and we direct that the said decision be followed by all courts in U.P. in letter and spirit, particularly since the provision for anticipatory bail does not exist in U.P.*

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***8.** In appropriate cases interim bail should be granted pending disposal of the final bail application, since arrest and detention of a person can cause irreparable loss to a person's reputation, as held by this Court in Joginder Kumar case. Also, arrest is not a must in all cases of cognizable offences, and in deciding whether to arrest or not the police officer must be guided and act according to the principles laid down in Joginder Kumar case."*

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E 70. In ***Vikas Pandurang case*** (supra), it was observed :

*"10. .....When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail**, unless it prima facie finds that such an offence is not made out."***

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71. Law laid down by this Court in ***Joginder Kumar*** (supra), ***Arnesh Kumar*** (supra), ***Rini Johar*** (supra), ***Siddharam Satlingappa*** (supra) to check uncalled for arrest cannot be ignored and clearly applies to arrests under the Atrocities Act. Protection of innocent is as important as punishing the guilty.

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72. In ***Dadu alias Tulsidas versus State of Maharashtra***[62] while considering the validity of exclusion of bail by an appellate court in NDPS cases, this Court noted the submission that the legislature could not take away judicial powers by statutory prohibition against suspending

H [62] (2000) 8 SCC 437

the sentence during the pendency of the appeal. This is an essential judicial function. The relevant observations are:

> "16. *Learned counsel appearing for the parties were more concerned with the adverse effect of the section on the powers of the judiciary. Impliedly conceding that the section was valid so far as it pertained to the appropriate Government, it was argued that the legislature is not competent to take away the judicial powers of the court by statutory prohibition as is shown to have been done vide the impugned section. Awarding sentence, upon conviction, is concededly a judicial function to be discharged by the courts of law established in the country. It is always a matter of judicial discretion, however, subject to any mandatory minimum sentence prescribed by the law. The award of sentence by a criminal court wherever made subject to the right of appeal cannot be interfered or intermeddled with in a way which amounts to not only interference but actually taking away the power of judicial review. Awarding the sentence and consideration of its legality or adequacy in appeal is essentially a judicial function embracing within its ambit the power to suspend the sentence under the peculiar circumstances of each case, pending the disposal of the appeal."*

73. On the above reasoning, it is difficult to hold that the legislature wanted exclusion of judicial function of going into correctness or otherwise of the allegation in a criminal case before liberty of a person is taken away. The legislature could not have intended that any unilateral version should be treated as conclusive and the person making such allegation should be the sole judge of its correctness to the exclusion of judicial function of courts of assessing the truth or otherwise of the rival contentions before personal liberty of a person is adversely affected.

74. It is thus patent that in cases under the Atrocities Act, exclusion of right of anticipatory bail is applicable only if the case is shown to *bona fide* and that *prima facie* it falls under the Atrocities Act and not otherwise. Section 18 does not apply where there is no *prima facie* case or to cases of patent false implication or when the allegation is motivated for extraneous reasons. We approve the view of the Gujarat High Court in ***Pankaj D Suthar (supra)*** and ***Dr. N.T. Desai (supra)***. We clarify the Judgments in ***Balothia*** (supra) and ***Manju Devi*** (supra) to this effect.

Issue of safeguards against arrest and false implications

75. We may now deal with the issue as to what directions, if any, are necessary, apart from clarifying the legal position with regard to anticipatory bail. The under privileged need to be protected against any atrocities to give effect to the Constitutional ideals. The Atrocities Act has been enacted with this objective. At the same time, the said Act cannot be converted into a charter for exploitation or oppression by any unscrupulous person or by police for extraneous reasons against other citizens as has been found on several occasions in decisions referred to above. Any harassment of an innocent citizen, irrespective of caste or religion, is against the guarantee of the Constitution. This Court must enforce such a guarantee. Law should not result in caste hatred. The preamble to the Constitution, which is the guiding star for interpretation, incorporates the values of liberty, equality and fraternity.

76. We are satisfied, in the light of statistics already referred as well as cited decisions and observations of the Standing Committee of Parliament that there is need to safeguard innocent citizens against false implication and unnecessary arrest for which there is no sanction under the law which is against the constitutional guarantee and law of arrest laid down by this Court.

77. We are conscious that normal rule is to register FIR if any information discloses commission of a cognizable offence. There are however, exceptions to this rule. In **Lalita Kumari versus State of U.P.[63],** it was observed :

> ***"115.*** *Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.*
>
> ***xxxx xxxx xxxx***

[63] (2014) 2 SCC 1

> ***117.*** *In the context of offences relating to corruption, this Court in P. Sirajuddin [(1970) 1 SCC 595] expressed the need for a preliminary inquiry before proceeding against public servants.*
>
> ***xxxx xxxx xxxx***
>
> ***120.6.*** *As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*
>
> *(a) Matrimonial disputes/family disputes*
>
> *(b) Commercial offences*
>
> *(c) Medical negligence cases*
>
> *(d) Corruption cases*
>
> *(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.*
>
> ***The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.***
>
> ***120.7.*** *While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry."*

78. The above view is consistent with earlier judgments in ***State of U.P. versus Bhagwant Kishore Joshi***[64] and ***P. Sirajuddin versus State of Madras***[65]**.** In ***Bhagwant Kishore*** it was observed:

> *"... ... ...In the absence of any prohibition in the Code, express or implied, I am of opinion that it is open to a Police Officer to make preliminary enquiries before registering an offence and making a full scale investigation into it. No doubt, Section 5A of the Prevention of Corruption Act was*

[64] AIR 1964 SC 221 = 1964(3) SCR 221
[65] (1970) 1 SCC 595

A *enacted for preventing harassment to a Government servant and with this object in view investigation, except with the previous permission of a Magistrate, is not permitted to be made by an officer below the rank of a Deputy Superintendent of Police. Where however, a Police Officer*
B *makes some preliminary enquiries, does not arrest or even question an accused or question any witnesses but merely makes a few discreet enquiries or looks at some documents without making any notes, it is difficult to visualize how any possible harassment or even embarrassment would result therefrom to the suspect or the accused person. ... ..."*

C In ***Sirajuddin*** (supra) it was observed:

"17. ... ...Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there
D *must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to*
E *the department he belonged to, in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can of taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable*
F *manner. ... ..."*

79. We are of the view that cases under the Atrocities Act also fall in exceptional category where preliminary inquiry must be held. Such inquiry must be time-bound and should not exceed seven days in view of directions in ***Lalita Kumari*** (supra).

G 80. Even if preliminary inquiry is held and case is registered, arrest is not a must as we have already noted. In ***Lalita Kumari*** (supra) it was observed:

"107. *While registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all*
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mandatory. In fact, registration of FIR and arrest of an accused person are two entirely different concepts under the law, and there are several safeguards available against arrest. Moreover, it is also pertinent to mention that an accused person also has a right to apply for "anticipatory bail" under the provisions of Section 438 of the Code if the conditions mentioned therein are satisfied. Thus, in appropriate cases, he can avoid the arrest under that provision by obtaining an order from the court."

81. Accordingly, we direct that in absence of any other independent offence calling for arrest, in respect of offences under the Atrocities Act, no arrest may be effected, if an accused person is a public servant, without written permission of the appointing authority and if such a person is not a public servant, without written permission of the Senior Superintendent of Police of the District. Such permissions must be granted for recorded reasons which must be served on the person to be arrested and to the concerned court. As and when a person arrested is produced before the Magistrate, the Magistrate must apply his mind to the reasons recorded and further detention should be allowed only if the reasons recorded are found to be valid. To avoid false implication, before FIR is registered, preliminary enquiry may be made whether the case falls in the parameters of the Atrocities Act and is not frivolous or motivated.

Consideration of present case

82. As far as the present case is concerned, we find merit in the submissions of learned amicus that the proceedings against the appellant are liable to be quashed.

Conclusions

83. Our conclusions are as follows:

i) Proceedings in the present case are clear abuse of process of court and are quashed.

ii) There 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 mala fide.* We approve the view taken and approach of the Gujarat High Court in ***Pankaj D Suthar*** (supra) and ***Dr. N.T. Desai*** *(supra)* and clarify the

judgments of this Court in ***Balothia*** (supra) and ***Manju Devi*** (supra);

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

iv) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.

The above directions are prospective.

84. Before parting with the judgment, we place on record our sincere appreciation for the invaluable assistance rendered by learned Amicus and also assistance rendered by learned counsel who have appeared in this case.

The appeal is accordingly allowed in the above terms.

Divya Pandey Appeal allowed.