

STATE OF M.P. AND ANR.

v.

RAM KISHNA BALOTHIA AND ANR.

FEBRUARY 6, 1995

[B.P. JEEVAN REDDY AND SUJATA V. MANOHAR, JJ.]

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 : Section 18—Offences fall into a separate and special class—Cannot be compared with other offences—Anticipatory bail—Denial of—Neither unreasonable nor unconstitutional.

Code of Criminal Procedure, 1973 : Section 438—Anticipatory bail—Neither an essential ingredient nor an integral part of Article 21 of the Constitution—Denial to special category of offences—Held : cannot be considered as violative of Article 21.

Constitution of India, 1950 : Articles 14 and 21.

Right to Anticipatory bail—Special category of offences—Denial of—Held : not an essential ingredient or an integral part and its denial not violative of Articles 14 and 21.

The respondents had filed a writ petition before the High Court challenging the constitutional validity of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which was allowed. Aggrieved by the High Court's judgment the appellants preferred the present appeal.

On behalf of the appellants it was contended that the offences enumerated in the Act fell into a separate and special class; that the offences arose out of the practice of "untouchability"; that exclusion of Section 438 of the Code of Criminal Procedure, 1973 had to be viewed in the context of prevailing social conditions; and that if anticipatory bail was granted to the offenders they were likely to terrorise their victims and prevent a proper investigation.

On behalf of the respondents it was contended that while Section 438 of the Code was available for graver offences under the Indian Penal Code, 1860 it was not available for offences under the Act; that Section 438 of the

- A code was an integral part of Article 21 of the Constitution; and that Section 18 of the Act was violative of Articles 14 and 21 of the Constitution.

Allowing the appeal, this Court

- B HELD : 1.1. The Sechduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted in order to prevent the commission of atrocities against members of Scheduled Castes and Scheduled Tribes and to provide for special courts for the trial of offence under the Act as also to provide for the relief and rehabilitation of victims of such offences. Section 438 of the Code of Criminal Procedure, 1973 does not apply to any case involving arrest of any person accused of having committed any of the offences under Section 18 of the Act. [901-D-E, 903-F]

- 1.2. It is undoubtedly true that Section 438 of the Code of Criminal Procedure, which is available to an accused in respect of offences under the Penal Code, is not available in respect of offences under the Act. [903-F]

- D 1.3. The offences enumerated under the Act fall into a separate and special class. Article 17 of the Constitution expressly deals with abolition of "Untouchability" and forbids its practice in any form. It also provides that enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1) of the Act arise out of the practice of "Untouchability". It is in this context that certain special provisions have been made in the Act, including the impugned provision under Section 18 of the Act. Exclusion of Section 438 of the Code of Criminal Procedure in connection with offences under the said Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail. [903-G-H, 904-A-B]

- G 2.1. The Statement of Objects and Reasons accompanying the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill, 1989 graphically describes the social conditions which motivated the said legislation. It is pointed out in the Statement of Objects and Reasons that when members of the Scheduled Castes and Scheduled Tribes assert their rights and demand statutory protection, vested interest try to cow them

down and terrorise them. In these circumstances, if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences. [904-C, 905-B]

2.2. Looking to the historical background relating to the practice of "Untouchability" and the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the said Act. It cannot be considered to be in any manner violative of Article 21. [907-A-B]

3.1. Article 21 enshrines the right to live with human dignity, a precious right to which every human-being is entitled; those who have been, for centuries, denied this right, more so. It is difficult to accept that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code. The Law Commission in its 41st Report recommended introduction of a provision for grant of anticipatory bail. [905-D]

3.2. In the light of the recommendation of the Law Commission, Section 438 was incorporated, for the first time, in the Criminal Procedure Code of 1973. Anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21. [905-F-G]

Kartar Singh v. State of Punjab, JT (1994) 2 SC 423 and 41st Report of the Law Commission, referred to.

4. The offences which are enumerated under Section 3 of the Act are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society, and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate

A and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code. [907-D]

B *Jai Singh and Anr. v. Union of India*, AIR (1993) Rajasthan 177, approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1343 of 1995 etc. etc.

C From the Judgment and Order dated 25.3.94 of the Madhya Pradesh High Court in Misc. P. No. 1748 of 1993.

D U.N. Bachawat, Ms. Kitty Kumaramangalam, Y.P. Mahajan, P. Parmeswaran, A.K. Srivastava, Ms. Sushma Suri, Sakesh Kumar, S.K. Agnihotri, Goutam Bose, Amitabh Verma, Ashok Mathur, K.M. Shukla, P.K. Manohar, Kartar Singh, M.S. Dahiya, S.K. Chaturvedi, C.S. Ashri, S.S. Sharma, A.K. Sanghi, B.P. Singh and B.S. Banthia for the appearing parties.

The Judgment of the Court was delivered by

E **SUJATA V. MANOHAR, J.** Special leave granted.

F These appeals by special leave have been filed by the State of Madhya Pradesh and another against the judgment and order dated 25.3.1994 of the High Court of Madhya Pradesh which is the common judgment governing all these appeals. In the petitions which were filed by F the respondents here, before the High Court of Madhya Pradesh under Article 226 of the Constitution, the respondents challenged the constitutional validity of certain provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The High Court, while negating this challenge in respect of some of the sections of the said Act has, however, held that Section 18 of the said Act is unconstitutional since it violates Articles 14 and 21 of the Constitution of India. The present appeals have been filed by the State of Madhya Pradesh to challenge the finding of the Madhya Pradesh High Court in respect of Section 18 of the said Act.

H Section 18 of the Scheduled Castes and Scheduled Tribes (Preven-

tion of Atrocities) Act, 1989 is as follows :

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"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."

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Section 438 of the Code of Criminal Procedure provides for grant of bail to persons apprehending arrest. It provides, *inter alia*, that when any person has reason to apprehend that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or to a Court of Sessions for a direction that in the event of such arrest, he shall be released on bail. We have to consider whether the denial of this right to apply for anticipatory bail in respect of offences committed under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, can be considered as violative of Articles 14 and 21 of the Constitution.

C

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the said Act') was enacted in order to prevent the commission of atrocities against members of Scheduled Castes and Scheduled Tribes and to provide for special courts for the trial of offence under the said Act as also to provide for the relief and rehabilitation of victims of such offences. "Atrocity" has been defined under Section 2 of the said Act to mean an offence punishable under Section 3(1). Section 3(1) provides as follows :-

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"Punishments for offences of atrocities :-

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(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -

(i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;

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(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

(iii) forcibly removes clothes from the person of a member

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- A of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;
- (iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste and Scheduled Tribe or get the land allotted to him transferred;
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- (v) wrongfully dispossesses a member of Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;
- C
- (vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;
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- (vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provides by law;
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- (viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;
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- (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;
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- (x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;
- (xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;
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(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed; A

(xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used; B

(xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to; C

(xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence, D

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine." E

Section 438 of the Code of Criminal Procedure does not apply to any case involving arrest of any person accused of having committed any of the above offences.

It is undoubtedly true that Section 438 of the Code of Criminal Procedure, which is available to an accused in respect of offences under the Penal Code, is not available in respect of offences under the said Act. But can this be considered as violative of Article 14? The offences enumerated under the said Act fall into a separate and special class. Article 17 of the Constitution expressly deals with abolition of "Untouchability" and forbids its practice in any form. It also provides that enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1) arise out of the practice of "Untouchability". It is in this context that certain special provisions have been F
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- A made in the said Act, including the impugned provision under Section 18 which is before us. The exclusion of Section 438 of the Code of Criminal Procedure in connection with offences under the said Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them
- B in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail. In this connection we may refer to the Statement of Objects and Reasons accompanying the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill, 1989, when it was introduced in Parliament. It sets out the circumstances surrounding the enactment of the
- C said Act and points to the evil which the statute sought to remedy. In the Statement of Objects and Reasons it is stated :-

"Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.

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- E 2. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant
- F and the mighty. Occupation and cultivation of even the government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the
- G disturbing trend of commission of certain atrocities like making the Scheduled Castes persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes A special
- H legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore,

become necessary."

The above statement graphically describes the social conditions which motivated the said legislation. It is pointed out in the above Statement of Objects and Reasons that when members of the Scheduled Castes and Scheduled Tribes assert their rights and demand statutory protection, vested interests try to cow them down and terrorise them. In these circumstances, if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences.

We have next to examine whether Section 18 of the said Act violates, in any manner, Article 21 of the Constitution which protects the life and personal liberty of every person in this country. Article 21 enshrines the right to live with human dignity, a precious right to which every human-being is entitled; those who have been, for centuries, denied this right, more so. We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code. The Law Commission in its 41st Report recommended introduction of a provision for grant of anticipatory bail. It observed :-

"we agree that this would be a useful advantage. Though we must add that it is in very exceptional cases that such power should be exercised."

In the light of this recommendation, Section 438 was incorporated, for the first time, in the Criminal Procedure Code of 1973. Looking to the cautious recommendation of the Law Commission, the power to grant anticipatory bail is conferred only on a Court of Sessions or the High Court. Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21.

Section 20(7) of the Terrorists and Disruptive Activities (Prevention) Act, 1987 came for consideration before this Court in the case of *Kartar Singh v. State of Punjab*, JT (1994) 2 SC 423. Section 20(7) of the Terrorists

A and Disruptive Activities (Prevention) Act, 1987 also provides that nothing in Section 438 of the Code of Criminal Procedure shall apply in relation to any case involving arrest of any person of an accusation of having committed an offence punishable under this Act or any rule made thereunder. The language of Section 20(7) is almost identical with the language of Section 18 of the said Act which we are considering. It was argued before this Court in *Kartar Singh's* case (supra) that the right of an accused to avail of anticipatory bail is an integral part of Article 21 of the Constitution and its removal from the Terrorists and Disruptive Activities (Prevention) Act, 1987 would be violative of Article 21. This Court referred to the history of introduction of Section 438 in the Code of Criminal Procedure (paragraph 355) and said that there was no such provision in the old Criminal Procedure Code and it was introduced for the first time in the present Code of 1973. This Court also pointed out that Section 438 is omitted in the State of U.P. by Section 9 of the Code of Criminal Procedure (UP Amendment) Act, 1976, with effect from 28.11.1975. In the State of West Bengal, a proviso is inserted to Section 438(1) with effect from 24.11.1988 to the effect that no final order shall be made on an application filed by the accused praying for anticipatory bail in relation to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 7 years, without giving the State not less than seven days' notice to present its case. A similar provision is also introduced by the State of Orissa. Where a person accused of a non-bailable offence is likely to abscond or otherwise misuse his liberty while on bail, he will have no justification to claim the benefit of anticipatory bail. In the case of terrorists and disruptists, there was every likelihood of their absconding and misusing their liberty if released on anticipatory bail and, therefore, there was nothing wrong in not extending the benefit of Section 438 to them. This Court concluded :-

G "further at the risk of repetition we may add that Section 438 contains a new provision incorporated in the present Code creating a new right. If that new right is taken away, can it be said that the removal of Section 438 is violative of Article 21"

Its answer was in the negative. Section 20(7) of the Terrorists and Disruptive Activities (Prevention) Act, 1987 was upheld.

H Of course, the offences enumerated under the present case are very

different from those under the Terrorists and Disruptive Activities (Prevention) Act, 1987. However, looking to the historical background relating to the practice of "Untouchability" and the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the said Act. It cannot be considered as in any manner violative of Article 21. A B

It was submitted before us that while Section 438 is available for graver offences under the Penal Code, it is not available for even "minor offences" under the said Act. This grievance also cannot be justified. The offences which are enumerated under Section 3 are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society, and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code. C D

A similar view of Section 18 of the said Act has been taken by the Full Bench of the Rajasthan High Court in the case of *Jai Singh and Anr. v. Union of India*, AIR (1993) Rajasthan 177 and we respectfully agree with its findings. E

In the premises, Section 18 of the said Act cannot be considered as violative of Articles 14 and 21 of the Constitution. F

The appeals are accordingly allowed. In the circumstances, there will be no order as to costs.

V.S.S.

Appeals allowed. G