

HARIRAM BHAMBHI

A

v.

SATYANARAYAN & ANR.

(Criminal Appeal No. 1278 of 2021)

OCTOBER 29, 2021

B

**[DR DHANANJAYA Y CHANDRACHUD  
AND B. V. NAGARATHNA, JJ.]**

*SC/ST (Prevention of Atrocities) Act, 1989: ss.15A(3) and 15A(5) – Rights of victims – Notice under s.15A not issued to victim/dependents while hearing bail application of accused – Effect of – Held: Sub-sections (3) and (5) of s.15A specifically make the victim or their dependent an active stakeholder in the criminal proceedings – These provisions enable a member of the marginalized caste to effectively pursue a case and counteract the effects of defective investigations – Sub-section (3) confers a right to a prior notice, this being evident from the use of the expression “reasonable, accurate, and timely notice of any court proceeding including any bail proceeding” – Sub-section (5) provides for a right to be heard to the victim or to a dependent – The provisions of sub-section (3) which stipulate the requirement of notice and of sub-section (5) which confers a right to be heard must be construed harmoniously – The defect in not issuing notice to the victim or their dependent and depriving them of the opportunity to be heard in the concerned proceedings (for grant of bail) cannot be cured by providing them a hearing in a proceeding that arose subsequently (for cancellation of bail) – Compliance with the principles of natural justice must be observed at every stage under the mandate of the statute.*

C

D

E

F

*SC/ST (Prevention of Atrocities) Act, 1989: s.15A – Undue delay in issuing notice to the victim – Held: Sub-section (3) of s.15A provides that a reasonable and timely notice must be issued to the victim or their dependent – This would entail that the notice is served upon victims or their dependents at the first or earliest possible instance – If undue delay is caused in the issuance of notice, the victim, or as the case may be, their dependents, would remain uninformed of the progress made in the case and it would prejudice their rights to effectively oppose the defense of the accused – It*

G

H

A would also ultimately delay the bail proceedings or the trial, affecting the rights of the accused as well.

B *Bail: Duty of court while granting bail – Considerations while granting bail – In the instant case, High Court held that it was just and expedient to release the first respondent on bail “keeping in view the facts and circumstances of the case” – The bail order did not mention factors that are relevant for the grant of bail, which are (i) the seriousness and gravity of the offence; and (ii) the role attributed to the first respondent in the commission of the crime – Thus, the order of the High Court in granting bail cannot pass muster – The duty to record reasons cannot be obviated by recording submissions, followed by an omnibus “in the facts and circumstances” formula – Brief reasons which indicate the basis for granting bail are essential, for it is the reasons adduced by the court which indicate the basis of the order – Judgment/Order – Reasoned order – SC/ST (Prevention of Atrocities) Act, 1989.*

D *SC/ST (Prevention of Atrocities) Act, 1989: Object of enactment – Discussed.*

#### **Allowing the appeal, the Court**

E **Held: 1. The SC/ST Act has been enacted by the Parliament to effectuate a salutary public purpose of achieving the fulfillment of constitutional rights of the Scheduled Castes and Scheduled Tribes. Section 15A, which comes under Chapter IV-A of the SC/ST Act titled ‘Rights of victims and witnesses’, was introduced by way of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, which came into effect on 26 January 2016. [Paras 10, 11][865-F; 866-G-H]**

F **2. Investigations in India are the exclusive domain of the police, where victims are often relegated to the role of being a spectator in the criminal justice system. Victims of crime often face significant hurdles during investigation and prosecution. Scheduled Castes and Scheduled Tribes specifically suffer on account of procedural lapses in the criminal justice system. They face insurmountable hurdles in accessing justice from the stage of filing the complaint to the conclusion of the trial. Due to the fear of retribution from members of upper caste groups, ignorance**

H

or police apathy, many victims do not register complaints in the first place. If victims or their relatives muster up the courage to approach the police, the police officials are reluctant to register complaints or do not record allegations accurately. Eventually, if the case does get registered, the victims and witnesses are vulnerable to intimidation, violence and social and economic boycott. Further, many perpetrators of caste-based atrocities get away scot-free due to shoddy investigations and the negligence of prosecuting advocates. This results in low conviction rates under the SC/ST Act giving rise to the erroneous perception that cases registered under the Act are false and that it is being misused. On the contrary, the reality is that many acquittals are a result of improper investigation and prosecution of crime, leading to insufficient evidence. This is evident from the low percentage of cases attracting the application of the provisions of the Penal Code relating to false complaints as compared to the rate of acquittals. [Para 12][867-C-G]

3. Sub-section (3) of Section 15A confers a right to a prior notice, this being evident from the use of the expression “reasonable, accurate, and timely notice of any court proceeding including any bail proceeding”. Sub-section (5) provides for a right to be heard to the victim or to a dependent. The provisions of sub-section (3) which stipulate the requirement of notice and of sub-section (5) which confers a right to be heard must be construed harmoniously. The requirement of issuing a notice facilitates the right to be heard. [Para 14][868-G-H; 869-A-C]

*Sunita Gandharva v. State of MP & Anr.* 2020 SCC OnLine MP 2193; *Hemal Ashwin Jain v. Union of India* R/Special Civil Application No. 6369 of 2020 – relied on.

4. In the present case, it is evident that the right to notice and to be heard were violated. Initially, when S.B. Criminal Appeal No.1132/2019 was heard by the High Court against the denial of bail by the Special Judge in the first bail application, the appellant was present through counsel. The appeal under Section 14A(2) of the SC/ST Act was not pressed by the first respondent and was

A

B

C

D

E

F

G

H

A accordingly dismissed. When the High Court entertained S.B. Criminal Appeal No.2518/2019 on 7 November 2019, no notice was given to the appellant. The High Court allowed the application for bail. When the appellant moved the High Court for cancellation of bail, the Single Judge took the view that compliance with the principles of natural justice at that particular stage would cure the deficiency. There has been a clear infraction of the mandate of the statute. Sub-sections (3) and (5) have been introduced by B the Parliament to ensure a right to be heard to the person against whom the offence is committed or to the dependents. These provisions must be scrupulously observed. The defect in not C issuing notice to the victim or their dependent and depriving them of the opportunity to be heard in the concerned proceedings (for grant of bail) cannot be cured by providing them a hearing in a proceeding that arose subsequently (for cancellation of bail). Compliance with the principles of natural justice must be observed D at every stage under the mandate of the statute. [Paras 18, 19][871-A-F]

*Ajeet Chaudhary v. State of UP* 2021 SCC OnLine All 417; *Basheer M. v. State of Kerala* 2020 SCC OnLine Ker 1675; *Mareenna and Ors. v. The State & Ors.* 2020 SCC OnLine Kar 1077; *Abid v. State of Rajasthan* 2020 SCC OnLine Raj 2703 – relied on.

E 5. Atrocities against members of the Scheduled Castes and Scheduled Tribes are not a thing of the past. They continue to be a reality in our society even today. Hence the statutory provisions which have been enacted by Parliament as a measure of protecting F the constitutional rights of persons belonging to the Scheduled Castes and Scheduled Tribes must be complied with and enforced conscientiously. There has been an evident breach of the statutory requirements embodied in sub-sections (3) and (5) of Section 15A in the present case. [Para 20][871-F-G]

G 6. Sub-section (3) of Section 15A provides that a reasonable and timely notice must be issued to the victim or their dependent. This would entail that the notice is served upon victims or their dependents at the first or earliest possible instance. If undue delay is caused in the issuance of notice, the victim, or as the

H

case may be, their dependents, would remain uninformed of the progress made in the case and it would prejudice their rights to effectively oppose the defense of the accused. It would also ultimately delay the bail proceedings or the trial, affecting the rights of the accused as well. [Para 21][871-H; 872-A-B]

*Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana* (2021) 6 SCC 230 – relied on.

7. While granting bail to the first respondent, the High Court in its order only recorded the submission of counsel for the first respondent that PW-2, the spouse of the deceased, had in the course of her statement recorded during the trial, stated that the deceased had gone with her brother ‘K’; that ‘K’ had obtained an insurance policy in the name of the deceased and that the murder had been committed by ‘K’ to obtain the proceeds of the insurance policy, with the help of his friends. There is absolutely no reasoning in the order of the High Court granting bail, after recording the submissions of the first respondent’s counsel apart from noting that the public prosecutor had opposed the bail. The High Court held that it was just and expedient to release the first respondent on bail “keeping in view the facts and circumstances of the case”. Such orders cannot pass muster. The duty to record reasons cannot be obviated by recording submissions, followed by an omnibus “in the facts and circumstances” formula. Brief reasons which indicate the basis for granting bail are essential, for it is the reasons adduced by the court which indicate the basis of the order. [Para 23] [873-A-D]

8. Before the High Court granted bail by its order dated 7 November 2019, the final report had been submitted on 6 September 2018. The final report under Section 173 CrPC contains a detailed analysis of the call data records of the accused who were in continuous contact with each other, as well as of their location in close proximity to the date and time of the incident. The bail order does not make any mention of factors that are relevant for the grant of bail, which are (i) the seriousness and gravity of the offence; and (ii) the role attributed to the first respondent in the commission of the crime. In this backdrop, the

- A **order of the High Court in granting bail cannot pass muster. Aggrieved by the order, the appellant had filed an application seeking its recall. The Single Judge of the High Court by the impugned order dated 8 June 2021 simply reiterated that the bail was granted on the basis of the statement of the wife of the deceased, PW.2, once again failing to show any engagement with**
- B **the considerations that govern the grant of bail. The order granting bail to the first respondent shall stand set aside. [Paras 24, 25][873-D-H]**

**Case Law Reference**

- C **(2021) 6 SCC 230**                      **relied on**                      **Para 22**
- CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.1278 of 2021
- From the Judgment and Order dated 08.06.2021 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in SB CrI. Misc.
- D **Cancellation Bail Application No.21 of 2020.**
- Ajit Kumar Thakur, Ram Nath, Ashok Kumar Vashishtha, Sandiv Kalia, Satbir Singh Pillania, Ms. Reena Rao, Nand Ram, Dr. Sushil Balwada, Advs. for the Appellant.
- Manish Sharma, Kumar Dushyant Singh, Chetanya Singh, Ilesh
- E **Shukla, Ms. Ria Sachthey, Milind Kumar, Advs. for the Respondents.**
- The Judgment of the Court was delivered by
- DR. DHANANJAYA Y CHANDRACHUD, J.**
1. Leave granted.
- F                      2. On 9 June 2018, the appellant lodged a report at Police Station Kishangarh, District Ajmer on the basis of which FIR No.116/2018 for offences punishable under Sections 302 and 201 of the Penal Code was registered. In his complaint, the appellant stated that on 8 June 2018, his younger brother Ram Niwas had gone out for carrying out labour work.
- G The appellant was informed by his mother that evening that Ram Niwas was away to meet his brother-in-law, Kishan Lal, and that he would not return for the day. On 9 June 2018, Ram Niwas's spouse informed the appellant that her brother Kishan Lal had taken Ram Niwas in a vehicle at about 3.00o'clock. The local residents informed the appellant that the dead body of Ram Niwas was thrown out of a vehicle at a specified
- H place in the area of Police Station Kishangarh. Investigation commenced

on the basis of the report lodged by the appellant. Since the deceased belonged to a Scheduled Caste, offences punishable under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989<sup>1</sup> were added. The first respondent was arrested. On 6 September 2018, a final report under Section 173 of the Code of Criminal Procedure<sup>2</sup> was submitted by the Investigating Officer against Kishan Lal and three other accused of which the first respondent was named as A-4.

3. Aggrieved by the rejection of his application for bail by the Sessions Court, the first respondent moved the High Court of Rajasthan seeking enlargement on bail<sup>3</sup>. The complainant was represented by counsel, notice having been given to him under sub-sections (3) and (5) of 15A of the SC/ST Act. The appeal was withdrawn on 8 August 2019.

4. On 25 September 2019, the first respondent instituted an application<sup>4</sup> before the Special Judge, SC/ST (Atrocities Prevention Cases) Ajmer for the grant of bail. The application for bail was rejected by the Special Judge by an order dated 25 September 2019. The Special Judge noted that the statements of five witnesses – PW.1 Suresh, PW.2 Smt. Aaram Devi, PW.3 Hari Ram, PW.4 Ramshankar and PW.5 Gokul Singh were recorded, but certain crucial witnesses were yet to be examined. Consequently, the second bail application submitted by the first respondent was rejected. The first respondent instituted an appeal<sup>5</sup> before the High Court against the rejection of a second application for bail. No notice was issued to the appellant under the provisions of Section 15A of the SC/ST Act.

5. On 7 November 2019, the High Court heard arguments in the appellate proceedings<sup>6</sup> when it was submitted by counsel for the first respondent that PW.2, the wife of the deceased, had stated that the deceased had accompanied his brother-in-law (co-accused Kishan Lal), who had taken an insurance policy in the name of the deceased and that it was Kishan Lal who had committed the murder with the help of his friends to obtain the proceeds of the insurance policy. After recording the above submission of the first respondent, the High Court enlarged

---

<sup>1</sup> “SC/ST Act“

<sup>2</sup> “CrPC“

<sup>3</sup> S.B. Criminal Appeal No.1132/2019

<sup>4</sup> Criminal Miscellaneous Case No.1253/2019

<sup>5</sup> S.B. Criminal Appeal No.2518/2019

<sup>6</sup> S.B. Criminal Appeal No.2518/2019

A the first respondent on bail by its order dated 7 November 2019. The order of the High Court reads thus:

B “1. The present criminal appeal under Section 14(A)(2) of the SC/ST (Prevention of Atrocities) Act has been filed in connection with FIR No.116/2018 registered at Police Station Kishangarh District Ajmer for the offences under Sections 302 & 201 of IPC and 3(2)(v) of SC/ST Act.

C 2. Counsel for the appellant submits that the appellant has been falsely implicated in this matter. Counsel further submits that the wife of the deceased Smt. Aaram Devi (PW-2) in her statement recorded during trial has stated that the deceased went with her brother co-accused Kishan Lal who he has taken insurance policy in the name of her husband and he also purchased the trailer on being financed in the name of her husband and for taking amount of insurance policy Kishan Lal committed murder of her husband with the help of his friends. Counsel further submits that no allegation has been levelled by her in the statement against the appellant and the appellant is behind the bars since 11.06.2018.

D 3. Learned Public Prosecutor has opposed the appeal.

E 4. Keeping in view the facts and circumstances of the case, it would be just and expedient to order the release of the appellant on bail.

F 5. The order dated 25.09.2019 passed by the learned Special Judge, SC/ST (Prevention of Atrocities Cases), Ajmer is quashed and set-aside and this appeal is accordingly allowed and it is directed that accused appellant Satyanarayan s/o Shri Sohandas shall be released on bail provided he furnishes a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) together with two sureties in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each to the satisfaction of the learned Trial Court with the stipulation that he shall appear before that Court and any Court to which the matter is transferred, on all subsequent dates of hearing and as and when called upon to do so.”

G 6. The appellant moved the High Court under Section 439(2) of CrPC for cancellation of bail.<sup>7</sup> In the meantime, another Single Judge of the High Court, by an order dated 29 January 2021 rejected the application

---

H <sup>7</sup>S.B. Criminal Bail Cancellation Application No.21/2020



for bail filed by three co-accused - Kalu Ram, Kishan Lal and Chaman Lal. The application for cancellation of bail before the High Court was moved principally on the ground that no notice was issued to the appellant under sub-section (3) of Section 15A of the SC/ST Act, resultingly no opportunity to be heard was provided under sub-section (5) of Section 15A. The Single Judge who had admitted the first respondent to bail on 7 November 2019 rejected the application on the ground that since the appellant was being heard in the application for cancelling bail, the requirements of sub-sections (3) and (5) of Section 15A were complied with. The High Court observed:

“So far as compliance of Section 15A (3)(5) of SC/ST is concerned, this Court today heard counsel for the complainant-petitioner again on merits, therefore, requirement of issuing notice to the complainant-petitioner (victim) as provided under Section 15A (3)(5) of the SC/ST Act is being complied with.

The order dated 07.11.2019 was passed by this Court after considering the statement of PW-2, Smt. Aaram Devi, wife of the deceased, therefore, I see no reason for recalling of the order dated 07.11.2019. As such, this criminal miscellaneous bail cancellation application is hereby dismissed.”

7. We have heard Mr Ajit Kumar Thakur, learned counsel in support of the appeal. Mr Manish Sharma, learned counsel has appeared on behalf of the first respondent while Mr Chetanya Singh, learned counsel has appeared on behalf of the State of Rajasthan. On behalf of the appellant, it has been submitted that:

- (i) There has been a fundamental infraction of the provisions of Section 15A of the SC/ST Act by the High Court in not issuing notice to the appellant, who in his capacity as a complainant, was entitled to be heard in any proceeding under the Act, *inter alia*, in respect of bail;
- (ii) As a matter of fact, in the appeal which had been filed before the High Court against the rejection of the first bail application by the Special Judge, the appellant was represented by counsel and that by an order dated 8 August 2019, the appeal was dismissed as not pressed;
- (iii) The failure to issue a notice to the appellant under sub-sections (3) and (5) of Section 15A before the grant of bail

- A by the High Court cannot be obviated subsequently by observing that the appellant was being heard on the application for cancellation of bail;
- (iv) In the order dated 7 November 2019 the Single Judge merely recorded the statement of counsel for the accused that the spouse of the deceased had in the course of her statement alleged that the deceased had gone with her brother who had obtained an insurance policy in the name of the deceased and it was Kishan Lal, the brother-in-law of the deceased, who had committed the murder with the help of his friends;
- B
- C (v) The final report which has been submitted after investigation on 6 September 2018 *prima facie* reveals the complicity of the first respondent in the murder of the deceased. The investigation has revealed that the first respondent together with two of the co-accused participated in the murder and there is a CCTV camera footage; and
- D
- (vi) Besides the statements of the spouse and the mother of the deceased and of an independent witness under Section 161 CrPC, the call data records of the accused have been obtained for the period between 1 June 2018 and 11 June 2018. The call data records indicate that all the accused were in close contact with each other during the said period and proximate to the time of the offence. The call data records also indicate the location of the accused at the time of the murder.
- E
- F 8. On the other hand, the learned counsel appearing on behalf of the first respondent submitted that:
- (i) The order granting bail has relied upon the statement of the spouse of the deceased that Ram Niwas was murdered by his brother-in-law Kishan Lal with the help of his friends for obtaining the proceeds of the insurance policy which was obtained in the name of the deceased and hence the main and substantive allegation is against Kishan Lal;
- G
- (ii) In the event that this Court comes to the conclusion that the appellant ought to have been heard before the grant of bail, the court may consider remanding the proceedings back to the High Court; and
- H

- (iii) Since his release on 7 November 2019 the first respondent has not committed any act which would have a detrimental bearing on his liberty. A

9. A counter affidavit has been filed on behalf of the State of Rajasthan by the Additional S.P., Rural District, Ajmer. The affidavit states that during the course of the investigation it has been revealed that Kishan Lal, the brother-in-law of Ram Niwas, helped the latter board the vehicle from Vijay Nagar to Bander Sinderi. After sometime, the local residents of Bander Sinderi saw the body of Ram Niwas being thrown out of the vehicle in front of Gokul Singh Dhaba situated in the Kishangarh area. Statements of witnesses were recorded under Section 161 CrPC. During the course of the investigation, the provisions of Section 3(2)(v) of the SC/ST Act were added; the accused belongs to the Swarn community while the deceased belonged to a Scheduled Caste. According to the affidavit, the *Safi* with which the deceased was killed in the vehicle was recovered at the behest of the accused, including the first respondent. Moreover, it has been submitted that the analysis of the call data records indicates that on 9 June 2018 continuous conversations were found between the accused at the location near Bandanwada at about 1.00pm and that thereafter the location of all the accused including the first respondent was found at the same place. It has been submitted in the affidavit that the first respondent is a habitual offender; he was previously charged for an offence under Sections 498A and 406 IPC in Case No.75/2008 in the Court of ACJM-01, Kekari District Court in which he has been convicted and sentenced to imprisonment for one year. B  
C  
D  
E

10. The SC/ST Act has been enacted by the Parliament to effectuate a salutary public purpose of achieving the fulfillment of constitutional rights of the Scheduled Castes and Scheduled Tribes. The Statement of Objects and Reasons accompanying the introduction of the Bill in 1989 contains the following elucidation: F

“1. 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. G

H

A 2. Because of the awareness created amongst the Scheduled  
Castes and the Scheduled Tribes through spread of education,  
etc., they are trying to assert their rights and this is not being  
taken very kindly by the others. When they assert their rights and  
resist practices of un-touchability against them or demand statutory  
B 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 and the mighty. Occupation and cultivation  
C of even the government allotted land by the Scheduled Castes  
and the 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 disturbing trend of commission of  
certain atrocities like making the Scheduled Castes persons eat  
inedible substances like human excreta and attacks on and mass  
D killings of helpless Scheduled Castes and Scheduled Tribes and  
rape of women belonging to the Scheduled Castes and the  
Scheduled Tribes. Under the circumstances, the existing laws like  
the protection of Civil Rights Act, 1955 and the normal provisions  
of the Indian Penal Code have been found to be inadequate to  
check these crimes. A special legislation to check and deter crimes  
E against them committed by non-Scheduled Castes and non-  
Scheduled Tribes has, therefore, become necessary.

3. The term 'atrocities' has not been defined so far. It is considered  
necessary that not only the term 'atrocities' should be defined but  
stringent measures should be introduced to provide for higher  
F punishments for committing such atrocities. It is also proposed to  
enjoin, on the States and the Union territories to take specific  
preventive and punitive measures to protect the Scheduled Castes  
and the Scheduled Tribes from being victimised and where  
atrocities are committed, to provide adequate relief and assistance  
to rehabilitate them.

G 4. The Bill seeks to achieve the above objects."

11. Section 15A, which comes under Chapter IV-A of the SC/ST  
Act titled 'Rights of victims and witnesses', was introduced by way of  
the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities)  
H Amendment Act, 2015, which came into effect on 26 January 2016. The

Statement of Objects and Reasons that accompanied the insertion of Chapter IV-A reads as follows: A

“(h) to insert a new Chapter IVA relating to “Rights of Victims and Witnesses” to impose certain duties and responsibilities upon the State for making necessary arrangements for protection of victims, their dependents and witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence”(emphasis supplied).” B

12. Investigations in India are the exclusive domain of the police, where victims are often relegated to the role of being a spectator in the criminal justice system. Victims of crime often face significant hurdles during investigation and prosecution. Scheduled Castes and Scheduled Tribes specifically suffer on account of procedural lapses in the criminal justice system. They face insurmountable hurdles in accessing justice from the stage of filing the complaint to the conclusion of the trial. Due to the fear of retribution from members of upper caste groups, ignorance or police apathy, many victims do not register complaints in the first place. If victims or their relatives muster up the courage to approach the police, the police officials are reluctant to register complaints or do not record allegations accurately. Eventually, if the case does get registered, the victims and witnesses are vulnerable to intimidation, violence and social and economic boycott.<sup>8</sup> Further, many perpetrators of caste-based atrocities get away scot-free due to shoddy investigations and the negligence of prosecuting advocates.<sup>9</sup> This results in low conviction rates under the SC/ST Act giving rise to the erroneous perception that cases registered under the Act are false and that it is being misused. On the contrary, the reality is that many acquittals are a result of improper investigation and prosecution of crime, leading to insufficient evidence. This is evident from the low percentage of cases attracting the application of the provisions of the Penal Code relating to false complaints as compared to the rate of acquittals.<sup>10</sup> C D E F

---

<sup>8</sup> C Prabhu, Protecting the Rights of Victims and Witnesses in Caste-Based Atrocities, Centre for Law and Policy Research Blog, available at <https://clpr.org.in/blog/protecting-the-rights-of-victims-witnesses-in-caste-based-atrocities/> (15 September 2020), last accessed on 27 October 2021. G

<sup>9</sup> Subhradipta Sarkar, The Quest for Victims’ Justice in India, Human Rights Brief 17(2) (2010), p.16-20.

<sup>10</sup> Sthabir Khora, Misconstruction of the Anti-atrocities Act’s Misuse, Economic and Political Weekly 53 (15) (14 April 2018). H

A 13. Section 15A of the SC/ST Act contains important provisions that safeguard the rights of the victims of caste-based atrocities and witnesses. Sub-sections (3) and (5) of Section 15A specifically make the victim or their dependent an active stakeholder in the criminal proceedings. These provisions enable a member of the marginalized caste to effectively pursue a case and counteract the effects of defective investigations. Sub-sections (1) to (5) of Section 15A are extracted below:

B “15A(1) It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.

C (2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victims age or gender or educational disadvantage or poverty.

D **(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.**

E (4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

F **(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.”**

(emphasis added)

G 14. Sub-section (3) of Section 15A confers a statutory right on the victim or their dependents to reasonable, accurate, and timely notice of any court proceeding including a bail proceeding. In addition, sub-section (3) requires a Special Public Prosecutor or the State Government to inform the victim about any proceeding under the Act. Sub-section (3) confers a right to a prior notice, this being evident from the use of the

H

expression “reasonable, accurate, and timely notice of any court proceeding including any bail proceeding”. Sub-section (5) provides for a right to be heard to the victim or to a dependent. The expression “dependent” is defined in Section 2(bb) thus: A

“2(bb) “dependent” means the spouse, children, parents, brother and sister of the victim, who are dependent wholly or mainly on such victim for his support and maintenance;” B

The provisions of sub-section (3) which stipulate the requirement of notice and of sub-section (5) which confers a right to be heard must be construed harmoniously. The requirement of issuing a notice facilitates the right to be heard. C

15. Many High Court decisions have noted that Section 15A was introduced to protect the rights of the victims and witnesses whose rights as equal beneficiaries of the criminal justice system are often overlooked due to their weak social position. The Madhya Pradesh High Court, in **Sunita Gandharva v. State of MP & Anr**,<sup>11</sup> while highlighting the purpose of the amendment inserting Section 15A observed that: D

“21. With the years of experience, it was found that due to some vagueness in the definitions and some procedural inertia, the purpose of Act lacked fulfilment, therefore, to make it more victim oriented, the Amendment Act was introduced. E

22. With the legislative intent reiterated in the letter, no iota of doubt exists that intention of the Amendment Act was for Speedy Trial and Protection of Victims’ Rights. By way of Section 2 (ec) Victim has been defined and beside Section 14-A, Section 15-A, “Rights of victim and witnesses” was introduced to take care of them for the first time. Definition of Victim includes-relatives, legal guardian and legal heirs and this definition is much wider than the definition of Victim provided in Section 2 (wa) of Cr.P.C. which includes guardian or legal heir, not the relatives. Similarly, Section 15A of Atrocities Act provides an extensive mechanism for protection of Victims/Witnesses. Even the victim has been given a chance to appear before the Court at the time of hearing of bail application. Right of the Court to cancel or revoke the bail is one of the measures by which protection of Victims/Witnesses can be ensured...” F G

---

<sup>11</sup> 2020 SCC OnLine MP 2193

A 16. The Gujarat High Court in **Hemal Ashwin Jain v. Union of India**<sup>12</sup> observed that:

“37. The victims, even today, have no semblance of rights at the investigation stage and a feeble position at the trial stage of a criminal prosecution.

B .....

53. We are also not impressed by the argument of Mr.Popat that Section 15A(3) of the Amendment Act should be construed as directory and not mandatory. As is evident from a plain reading of the section quoted above, the victim must be served with notice of the bail application and must be provided an opportunity to be heard and advance argument. When a statute specifically provides a right to the victim/dependent to be heard at any proceedings in respect of bail, and if the court fails to provide such opportunity, then there is an inherent failure of justice. This procedure, in our opinion, cannot be bypassed. The non-compliance of the provision of Section 15A(3) of the Amendment Act would render an order null and void. If Section 15A(3) of the Amendment Act is to be construed as directory, then the very object and purpose with which such provision is enacted would get frustrated.”

C

D

E

**61. In such circumstances referred to above, we hold that Section 15A(3) of the Amendment Act is mandatory and not directory”**

(emphasis supplied).

F 17. The finding of the Gujarat High Court that the requirement of issuing notice of a court proceeding to a victim or a dependent under Section 15A (3), in order to provide them an opportunity of being heard, is mandatory, finds echo in multiple High Court decisions<sup>13</sup> including a decision of the Rajasthan High Court<sup>14</sup>. We find ourselves in agreement with the proposition and hold that sub-sections (3) and (5) of Section 15A are mandatory in nature.

G <sup>12</sup> R/Special Civil Application No. 6369 of 2020 (Gujarat High Court), available at [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-380514.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-380514.pdf) (last accessed on 27 October 2021).

<sup>13</sup> Ajeet Chaudhary v. State of UP, 2021 SCC OnLine All 417 (Allahabad High Court); Basheer M. v. State of Kerala, 2020 SCC OnLine Ker 1675 (Kerala High Court); and Marena and Ors. v. The State & Ors., 2020 SCC OnLine Kar 1077 (Karnataka High Court).

H <sup>14</sup> Abid v. State of Rajasthan, 2020 SCC OnLine Raj 2703.



18. In the present case, it is evident that the right to notice and to be heard were violated. Initially, when S.B. Criminal Appeal No.1132/2019 was heard by the High Court against the denial of bail by the Special Judge in the first bail application, the appellant was present through counsel. The appeal under Section 14A(2) of the SC/ST Act was not pressed by the first respondent and was accordingly dismissed. Section 14A(2) is in the following terms:

“14A(2) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.”

19. When the High Court entertained S.B. Criminal Appeal No.2518/2019 on 7 November 2019, no notice was given to the appellant. The High Court allowed the application for bail. When the appellant moved the High Court for cancellation of bail, the Single Judge took the view that compliance with the principles of natural justice at that particular stage would cure the deficiency. There has been a clear infraction of the mandate of the statute. Sub-sections (3) and (5) have been introduced by the Parliament to ensure a right to be heard to the person against whom the offence is committed or to the dependents. These provisions must be scrupulously observed. We cannot agree with the finding of the Single Judge that the defect in not issuing notice to the victim or their dependent and depriving them of the opportunity to be heard in the concerned proceedings (for grant of bail) can be cured by providing them a hearing in a proceeding that arose subsequently (for cancellation of bail). Compliance with the principles of natural justice must be observed at every stage under the mandate of the statute.

20. Atrocities against members of the Scheduled Castes and Scheduled Tribes are not a thing of the past. They continue to be a reality in our society even today. Hence the statutory provisions which have been enacted by Parliament as a measure of protecting the constitutional rights of persons belonging to the Scheduled Castes and Scheduled Tribes must be complied with and enforced conscientiously. There has been an evident breach of the statutory requirements embodied in sub-sections (3) and (5) of Section 15A in the present case.

21. We also emphasize that sub-section (3) of Section 15A provides that a reasonable and timely notice must be issued to the victim or their dependent. This would entail that the notice is served upon victims or

A their dependents at the first or earliest possible instance. If undue delay is caused in the issuance of notice, the victim, or as the case may be, their dependents, would remain uninformed of the progress made in the case and it would prejudice their rights to effectively oppose the defense of the accused. It would also ultimately delay the bail proceedings or the trial, affecting the rights of the accused as well.

B  
C 22. Quite apart from the infraction of the provisions of the SC/ST Act, there has been no application of mind by the Single Judge of the High Court to the considerations that govern the grant of bail. This Court recently in **Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana**<sup>15</sup>, of which one of us was a part (Justice DY Chandrachud), has elaborated on the considerations that govern the grant of bail. This Court also emphasized that recording of reasons by a judge is not a task in formality, but an exercise of judicial accountability and transparency, which makes the decision available for further scrutiny at the touchstone of reason and justice. This Court observed:

D “39. Grant of bail under Section 439 CrPC is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail—as in the case of any other discretion which is vested in a court as a judicial institution—is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice....

E  
F 40. We are also constrained to record our disapproval of the manner in which the application for bail of Vishan (A-6) was disposed of. The High Court sought to support its decision to grant bail by stating that it had perused the material on record and was granting bail “without discussing the evidence in detail” taking into consideration:

G (1) the facts of the case;  
(2) the nature of allegations;  
(3) gravity of offences; and  
(4) role attributed to the accused.”

---

H <sup>15</sup> (2021) 6 SCC 230

23. While granting bail to the first respondent, the High Court in its order dated 7 November 2019 only recorded the submission of counsel for the first respondent that PW-2, the spouse of the deceased, had in the course of her statement recorded during the trial, stated that the deceased had gone with her brother Kishan Lal; that Kishan Lal had obtained an insurance policy in the name of the deceased and that the murder had been committed by Kishan Lal to obtain the proceeds of the insurance policy, with the help of his friends. There is absolutely no reasoning in the order of the High Court granting bail, after recording the submissions of the first respondent's counsel apart from noting that the public prosecutor had opposed the bail. The High Court held that it was just and expedient to release the first respondent on bail "keeping in view the facts and circumstances of the case". Such orders cannot pass muster. The duty to record reasons cannot be obviated by recording submissions, followed by an omnibus "in the facts and circumstances" formula. Brief reasons which indicate the basis for granting bail are essential, for it is the reasons adduced by the court which indicate the basis of the order.

24. Before the High Court granted bail by its order dated 7 November 2019, the final report had been submitted on 6 September 2018. The final report under Section 173 CrPC contains a detailed analysis of the call data records of the accused who were in continuous contact with each other, as well as of their location in close proximity to the date and time of the incident. The bail order does not make any mention of factors that are relevant for the grant of bail, which are (i) the seriousness and gravity of the offence; and (ii) the role attributed to the first respondent in the commission of the crime. In this backdrop, the order of the High Court in granting bail cannot pass muster. Aggrieved by the order, the appellant had filed an application<sup>16</sup> seeking its recall. The Single Judge of the High Court by the impugned order dated 8 June 2021 simply reiterated that the bail was granted on the basis of the statement of the wife of the deceased, PW.2, once again failing to show any engagement with the considerations that govern the grant of bail.

25. The appeal is accordingly allowed and the impugned order of the Single Judge of the High Court of Punjab and Haryana dated 8 June 2021 in S.B. Criminal Bail Cancellation Application No. 21/2020 is set aside. The order granting bail to the first respondent dated 7 November

---

<sup>16</sup> S.B. Criminal Miscellaneous Bail Cancellation Application No. 21/2020

A 2019 shall stand set aside. The first respondent shall surrender into custody on or before 7 November 2021.

26. The observations made during the course of this judgment are only for the purpose of considering the grant of bail to the first respondent and shall not have a bearing on the merits of the case as such.

B 27. Pending application(s), if any, shall stand disposed of.

Devika Gujral

Appeal allowed.