* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: September 16, 2026

% ***Pronounced on: September 24, 2026***

\# **CNR No. DLHC010432042026**

\+ **BAIL APPLN. 3808/2026**

AJEET BHARTI **....Applicant**

Through: Mr. Jai Anant Dehadrai, Mr. Pratyush Prasanna, Ms. Yashvi Aswani, Mr. Ram Pravesh Dubey and Mr. Rishabh Chauhan, Advs.

Versus

STATE OF NCT OF DELHI AND ANR. **....Respondents**

Through: Ms. Meenakshi Dahiya, APP with Mr. Ashish Priya, Ms. Kirti Gupta, Ms. Urmila Saluja, Mr. Mukesh Kumar Pand, Ms. Upasna Bakshi, Mr. Sourav Suman and Ms. Divya Bakshi, Advocates
ACP Mahesh Kumar, ACP/DIU and Insp. Ajay Singh, PS: North Avenue
Mr. Mohan Shyam Arya, Mr. Abhishek Suman, Mr. Pradeep Kumar, Mr. Satish Kumar, Mr. Mukesh Gautam, Mr. Umar Khan, Mr. Surya Pratap Deva, Mr. Chandra Gupta and Mr. Sourabh Rai, Advs. for R-2

CORAM:
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. By virtue of the present application under *Section 482* of the Bharatiya Nagarik Suraksha Sanhita, 2023[1], the applicant seeks grant of

[1] Hereinafter referred to as '***BNSS***'

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anticipatory bail in proceedings arising out of FIR No.30/2026 dated 28.03.2026 registered at PS: North Avenue under *Sections 3(2)(va)/3(1)(r)/3(1)(s)/3(1)(u)/3(1)(v)/3(1)(w)* of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989[2], *Section 67* of the Information Technology Act, 2000[3] and *Sections 196(1)(c)/351(3)* of the Bharatiya Nyaya Sanhita, 2023[4].

2. Since learned counsel for the applicant has addressed all his arguments *qua* the present application, to which learned counsel for the complainant, appearing on advance service, has also argued in rebuttal, as well as learned APP made submissions on behalf of the State, after handing over the Status Report, which was taken on record, with the consent of learned counsels for the parties as also the learned APP, the present application is being disposed of accordingly.

3. *Succinctly put*, the present FIR was registered at the instance of the complainant, being the Delhi State President of the political party namely Azad Samaj Party, who stated that on 22.08.2026, the applicant uploaded and circulated one audio-visual media entitled '*SB79: Reservation Hatao Andolan Nautanki & More/ Saptahik Bakaiti*'[5] through his social media and digital presence, which allegedly had approximately *23,100 views* at the time of registration of the FIR, and which contained repeated caste-based abuse, caste-names/ slurs and derogatory remarks particularly directed at Mr. Chandrashekhar Azad[6], Member of Parliament on behalf of the constituency Nagina, Uttar Pradesh from the Azad Samaj Party, and

[2] Hereinafter referred to as '***SC/ ST Act***'
[3] Hereinafter referred to as '***IT Act***'
[4] Hereinafter referred to as '***BNS***'
[5] Hereinafter referred to as '***concerned video***'
[6] Hereinafter referred to as '***named individual***'

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who also belongs to the SC community, with the intent to humiliate him, as also against Dr. B.R. Ambedkar and other members of the Scheduled Caste[7] and the Scheduled Tribe[8] communities at large and to promote caste-based hatred and ill-will in society.

4. In this backdrop this Court has heard learned counsels for the parties and carefully perused the pleadings and documents on record along with the judgments cited at the Bar.

5. Before adverting to the factual matrix involved, since the present FIR involves allegations under the SC/ ST Act, this Court is to proceed keeping in mind the relevant provisions of *Sections 18/ 18A(2)* therein, which, for ready reference reproduced as under:-

> *"**18. Section 438 of the Code not to apply to persons committing an offence under the Act**-Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.'*
>
> *'**18A. No enquiry or approval required**-*
> *** *** ***
> *(2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.'*

6. Needless to say, "*Section 438 of the Code*" (the Code of Criminal Procedure, 1973) therein, being the erstwhile provision pertaining to grant of an anticipatory bail, is *para materia* to *Section 482* BNSS. As such, there is no gainsaying that above *Sections 18/ 18A(2)* SC/ ST Act are very much applicable in the same manner to the facts involved in the present application under *Section 482* BNSS as well.

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[7] Hereinafter referred to as '***SC***'
[8] Hereinafter referred to as '***ST***'

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7. The aforesaid *Sections 18/ 18A(2)* SC/ ST Act, i.e. the (***non***-) applicability of the provisions *qua* grant of an anticipatory bail to cases under the SC/ ST Act, have recently been interpreted by the Hon'ble Supreme Court, after analysing a long line of judicial precedents in ***Shajan Skaria vs. State of Kerala***[9], wherein it has been held as under:-

> *"24. It is manifest from a plain reading of Section 18 referred to above that it bars the applicability of Section 438 of the CrPC in respect of offences under the Act, 1989.* ***The legislature in its wisdom thought fit that the benefit of anticipatory bail should not be made available to the accused in respect of offences under the Act, 1989, having regard to the prevailing social conditions which give rise to such offences and the apprehension that the perpetrators of such atrocities are likely to threaten and intimidate the victims and prevent or obstruct them in the prosecution of such offences, if they are allowed to avail the benefit of anticipatory bail.***
>
> *[*** *** ***]*
>
> *46. The aforesaid discussion indicates that the term 'arrest' appearing in the text of Section 18 of the Act, 1989 should be construed and understood in the larger context of the powers of police to effect an arrest and the restrictions imposed by the statute and the courts on the exercise of such power.* ***Seen thus, it can be said that the bar under Section 18 of the Act, 1989 would apply only to those cases where prima facie materials exist pointing towards the commission of an offence under the Act, 1989. We say so because it is only when a prima facie case is made out that the pre-arrest requirements as stipulated under Section 41 of CrPC could be said to be satisfied****.'*
>
> ***iii. When can it be said that a prima facie case is made out in a given FIR/complaint?***

[9] 2024 SCC OnLine SC 2249

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> *47. Prima facie is a Latin term that translates to "at first sight" or "based on first impression".* ***The expression "where no prima facie materials exist warranting arrest in a complaint or FIR" should be understood as "when based on first impression, no offence is made out as shown in the FIR or the complaint". This means that when the necessary ingredients to constitute the offence under the Act, 1989 are not made out upon the reading of the complaint, no case can be said to exist prima facie****.*
>
> *48. As a sequitur, if the necessary ingredients to constitute the offence under the Act, 1989 are not disclosed on the prima facie reading of the allegations levelled in the complaint or FIR, then in such circumstances, as per the consistent exposition by various decisions of this Court, the bar of Section 18 would not apply and the courts would not be absolutely precluded from granting pre-arrest bail to the accused persons.*
>
> *49. In our opinion, the aforesaid is the only test that the court should apply, when an accused prays for anticipatory bail in connection with any offence alleged to have been committed under the provisions of the Act, 1989 […… ……]* ***However, powers under Section 438 of the CrPC cannot be exercised once the contents of the complaint/ FIR disclose a prima facie case. In other words, if all the ingredients necessary for constituting the offence are borne out from the complaint, then the remedy of anticipatory bail becomes unavailable to the accused****.'*
>
> ***[Emphasis Supplied]***

8. In fact, it is the learned counsel for the applicant who has placed reliance on ***Shajan Skaria (supra)*** before this Court.

9. In fact, more recently in ***Kiran vs. Rajkumar Jivraj Jain & Anr.***[10] the Hon'ble Supreme Court has once again analysed the nature of the bar on grant of an anticipatory bail in cases under the SC/ ST Act, as also the

[10] 2025 SCC OnLine SC 1886

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objects, reasons and legislative intent therefor, and has also referred to ***Shajan Skaria (supra)*** along with other relevant judgements on the subject, and looked into the powers of the Court while doing so to hold as under:-

> *"5.1.1. Section 18A in its sub section (1) of the Act provides that for the registration of an FIR against any person, preliminary enquiry shall not be required. It is further stated that the investigating officer shall not be required to take approval for the arrest, if necessary, of any person against whom an accusation about the commission of an offence under this SC/ST Act has been made. Sub section (2) of Section 18A of the SC/ST Act mentions that the provisions of Section 438 of the Cr. P.C. shall not apply to a case under this Act notwithstanding any judgment or order or direction of any Court.*
>
> ***5.2. It is evident from the above provision of Section 18 that it expressly excludes the applicability of Section 438 of the Criminal Procedure Code, 1973 ("hereinafter referred to as "the Cr. P.C."). In another words, in relation to any case involving arrest of a person who is facing the accusation about committing offence under this Act, protection of Section 438, Cr. P.C. would not be available. The Legislature has taken away the benefit of anticipatory bail in respect of the arrest for the offences alleged under the SC/ST Act. The bar in Section 18 of the SC/ST Act would operate.***
>
> *5.3. While upholding the Constitutional validity of Section 18 of the Act, this Court in State of M.P. v. Ram Krishna Balothia [(1995) 3 SCC 221] observed as under,*
>
> > *"... 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*

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punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1) arise out of the practice of 'untouchability'."

5.3.1. The court proceeded to observe,

*"**The exclusion of Section 438 CrPC in connection with offences under the Act has to be viewed in the contest 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 as pointed out in the Statement of Objects and Reasons of the Act.** 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"*

*[*** *** ***]*

***5.8. The decision of this Court in Shajan Skaria (supra) sought to be pressed into service on behalf of respondent No. 1 take no different view. In that case, the Bench of two Judges of this Court elaborated the law in respect of grant of anticipatory bail, then highlighted and recognised the bar created under Section 18 of the SC/ST Act to observe that only in the cases where the offence could not be said to have been made out on a very prima facie consideration, the court may exercise the discretion to grant pre-arrest bail to the accused**.*

*[*** *** ***]*

6. In light of the parameters in relation to the applicability of Section 18 of the Act emanating from afore-discussed various decisions of this Court, the proposition could be summarised that as the provision of Section 18 of the Scheduled Caste and Scheduled Tribes

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Act, 1989 with express language excludes the applicability of Section 438, Cr. P.C., it creates a bar against grant of anticipatory bail in absolute terms in relations to the arrest of a person who faces specific accusations of having committed the offence under the Scheduled Caste and Scheduled Tribe Act. The benefit of anticipatory bail for such an accused is taken off*.*

6.1. The absolute nature of bar, however, could be read and has to be applied with a rider. ***In a given case where on the face of it the offence under Section 3 of the Act is found to have not been made out and that the accusations relating to the commission of such offence are devoid of prima facie merits, the Court has a room to exercise the discretion to grant anticipatory bail to the accused under Section 438 of the Code.***

6.2. Non-making of prima facie case about the commission of offence is perceived to be such a situation where the Court can arrive at such a conclusion in the first blush itself or by way of the first impression upon very reading of the averments in the FIR. The contents and the allegations in the FIR would be decisive in this regard. Furthermore, in reaching a conclusion as to whether a prima facie offence is made out or not, it would not be permissible for the Court to travel into the evidentiary realm or to consider other materials, nor the Court could advert to conduct a mini trial.*'*

[Emphasis Supplied]

10. Thus, it entails therefrom that where there are allegations under the SC/ ST Act against anyone like the applicant herein, if, on a bare perusal of the contents of the FIR and the supporting materials on record, *albeit*, without conducting a mini-trial, offences under the SC/ ST Act, are found to be "*...prima facie* ***not*** made out…", then, and only then, the application by such individual seeking grant of an anticipatory bail may be considered, otherwise, the bar created thereon by virtue of *Section 18/*

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18A(2) SC/ ST Act, would apply in full force and any such application for grant of an anticipatory bail by anyone like the applicant herein is/ will not be maintainable, and, thus, liable to be dismissed.

11. Therefore, under the facts and circumstances involved herein, it is necessary for this Court to determine as to whether there is a *prima facie* case made out under the SC/ ST Act against the applicant herein. The specific provisions of the SC/ ST Act invoked against the applicant are reproduced as under:-

> *"**3. Punishments for offences atrocities**-(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-*
>
> *[*** *** ***]*
>
> ***(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;***
>
> ***(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;***
>
> *[*** *** ***]*
>
> *(u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;*
>
> *(v) by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes;*
>
> *(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;*

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(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

*[*** *** ***]*

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

*[*** *** ***]*

(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;'

[Emphasis Supplied]

12. Both *Sections 3(1)(r)/ 3(1)(s)* hereinabove are emphasised since learned counsels for the applicant as well as that of the complainant have strictly restricted their respective arguments only *qua* the same for the purposes of the present application.

13. Moving ahead accordingly, since the concerned video viewed by as many as *23,000* users logged on is the bedrock of the issue raised in the FIR by the prosecution, this Court has gone through the relevant portions thereof in Chambers *via* a pen drive handed over by the IO in Court, as well as the exact transcript thereof forming a part of the record.

14. It is pertinent to mention that learned counsel for the applicant has during the course of his arguments admitted that the applicant does not belong to any of the SC/ ST communities. The learned counsel has also candidly admitted that, having regard to the public nature of the social media platform wherein the concerned video was aired on, as well as

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considering the wide audience who witnessed/ viewed the same, the airing of the concerned video is an incident in a place '*within public view*'. Thus, since this is an admitted position, this Court need not to traverse thereon.

15. Therefore, in today's age when the Internet is the fastest mode of dissemination of anything, the concerned video uploaded on the world wide web, which is a public digital platform with open and easy access to one and all across the Globe, plays a vital role as it is freely available/ accessible over the Internet at all times, and can be seen, heard, consumed, engaged with and/ or reshared by anyone at any time of their choosing. Under such a scenario, there is no requirement for physical presence of the victim like the named individual herein, as the same is accessible without any fetters.

16. Regarding the contents of the concerned video, particularly pertaining to the named individual, this Court, after hearing and seeing the same, is of the considered opinion that, *prima facie*, the same is such wherein the applicant has made certain caste-based abuses, caste-names/ slurs and denigratory remarks aimed at causing embarrassment/ humiliation/ dishonour to as also affect the dignity of the named individual, some of which are reproduced as under:-

> *"… …**अजीत भारती अपनी बहन की शादी MP चंद्रशेखर से कर दो reservation खत्म हो जाएगी। सिंह जी यदि आपने experiment किया हुआ है अपनी बहन की शादी किसी डXXX [caste slur] से करवाई हो या अपनी मां की शादी किसी चXXX [caste slur] से करवा दी हो तो*[11] … मतलब यह आप मेरी बहन की शादी हो गई है उसके दो बच्चे हैं। she is quite comfortable in her life. तो उसको मैं चंद्रशेखर जैसे [___] के साथ तो नहीं विवाह करवाऊंगा। मतलब अगर वैसा होता… शक्ल देखें*

[11] Hereinafter referred to as '***STATEMENT ONE***'

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चंद्रशेखर की? थूकने योग्य नहीं है। उसकी मूछ देखकर के मैं उसके मुंह पर थूक दूंगा। तो भाई विवाह में बहुत सारी चीजें देखी जाती है। ***<u>यह नहीं कि चXXX [caste slur] है और MP है इसलिए विवाह कर दो।</u>*** [12] *ऐसे नहीं होता है।* ***<u>चंद्रशेखर को स्वयं को उस योग्य बनाना पड़ेगा कि वह जो है किसी भी सवर्ण का उसकी बेटी का हाथ मांगे।</u>*** [13]*…"*

[Emphasis Supplied]

Translation:

*"… …**<u>Ajeet Bharti get your sister married to MP Chandrashekar and reservation will end. Singh Ji, if you have conducted this experiment, gotten your sister married to some DXXX [caste slur], or gotten your mother married to some CHXXX [caste slur] then…</u>** **(STATEMENT ONE)** I mean, my sister is already married, she has two children. She is quite comfortable in her life. So, I wouldn't get her married to a [___] like Chandrashekhar. I mean… have you seen his face? It's not even worth spitting on. I will spit on his face seeing his moustache. There are many considerations in a marriage. **<u>It's not like he is a CHXXX [caste slur] and an MP, so marriage is done.</u>** **(STATEMENT TWO)** It's not like that. **<u>Chandrashekhar will have to make himself worthy enough so he can ask for the hand of a savarna, their daughter.</u>** **(STATEMENT THREE)**"*

[Emphasis Supplied]

17. As evident from the above, both *<u>STATEMENT ONE</u>* and *<u>STATEMENT TWO</u>* make it amply clear that the applicant publicly identified the named individual with caste-names/ slurs. *<u>STATEMENT ONE</u>*, which was immediately preceded by a direct reference to the named individual, contains two explicit caste-names/ slurs apparently in response to a comment specifically about the named individual, which together

[12] Hereinafter referred to as '***STATEMENT TWO***'
[13] Hereinafter referred to as '***STATEMENT THREE***'

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have the clear impact of equating the named individual to the said caste-names/ slurs. Then, after several derogatory remarks about the named individual and the use of abusive words *qua* him in the statements in between, *STATEMENT TWO* is where the applicant once again goes on to identify both '*MP (Member of Parliament)*' and the caste-name/ slur in the very same breath, once again, leaving no manner of doubt that it was, in fact, the named individual to whom he was publicly attaching the caste-names/ slurs used by him.

18. Going further, and after having so identified the named person with the caste-names/ slurs used, the applicant goes on in *STATEMENT THREE* to, once again, directly refer to the named individual and state that he would have to "*... ...make himself worthy enough to ask for the hand of a **savarna**, their daughter... ...*" which term itself, as *admitted* in Court by learned counsel for the applicant, has been used by the applicant to refer to the so-called '*upper-caste*' individuals, thereby otherising the named individual and suggesting invocation of caste hierarchy and superiority against him in a glaring manner.

19. Therefore, it is borne out therefrom that the applicant, being well-aware of the named individual, his status, position, caste, gender, and the like, chose to make all the remarks, he did within the context of what he was talking about. Reading the aforesaid extracted portion as a whole, including the actual words used by the applicant while referring to the named individual directly as also while alluding to him indirectly while simultaneously using explicit caste-names/ slurs, the nature, tone, tenor and manner of expression employed therein and the overall context in which they were made, this Court is of the *prima facie* view that the

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present FIR clearly discloses that the applicant used/ abused the named individual using caste-names/ slurs, which were with a view to humiliate the named individual within the purview of *Sections 3(1)(r)/3(1)(s)* SC/ ST Act.

20. *Interestingly,* this Court finds that the Hon'ble Supreme Court in ***Shajan Skaria (supra)***, relied on by learned counsel for the applicant himself, though the remarks made by the accused therein containing no reference to the caste of the victim, were overall found to be in the nature of only reckless allegations, however, on the overall intent and purport of *Section 3(1)(r)* SC/ ST Act, held as under:-

> *"61.* ***The words "with intent to humiliate" as they appear in the text of Section 3(1)(r) of the Act, 1989 are inextricably linked to the caste identity of the person who is subjected to intentional insult or intimidation.*** *Not every intentional insult or intimidation of a member of a SC/ ST community will result into a feeling of caste-based humiliation.* ***It is only in those cases where the intentional insult or intimidation takes place either due to the prevailing practice of untouchability or to reinforce the historically entrenched ideas like the superiority of the "upper castes" over the "lower castes/untouchables", the notions of 'purity' and 'pollution', etc. that it could be said to be an insult or intimidation of the type envisaged by the Act, 1989***.
>
> *62. We would like to refer to the observations of this Court in Ram Krishna Balothia (supra) to further elaborate upon the idea of "humiliation" as it has been used under the Act, 1989. It was observed in the said case that the offences enumerated under the Act, 1989 belong to a separate category as they arise from the practice of 'untouchability' and thus the Parliament was competent to enact special laws treating such offences and offenders as belonging to a separate category.* ***Referring to the Statements of Objects***

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and Purposes of the Act, 1989 it was observed by this Court that the object behind the introduction of the Act, 1989 was to afford statutory protection to the Scheduled Castes and the Scheduled Tribes, who were terrorised and subjected to humiliation and indignations upon assertion of their civil rights and resistance to the practice of untouchability. For this reason, mere fact that the person subjected to insult or intimidation belongs to a Scheduled Caste or Scheduled Tribe would not attract the offence under Section 3(1)(r) unless it was the intention of the accused to subject the concerned person to caste-based humiliation.*"*

[Emphasis Supplied]

21. Therefore, considering the repeated references to caste-names/ slurs, directly and indirectly aimed at the named individual, who is a member of SC community, and that too in the context of the concerned video, makes it clear that the remarks made therein were not general or reckless/ stray. They were clear references to caste, and explicit invocation of ideas of caste superiority prevalent in society, that too, with reference to the institution of marriage, which also represents age old notions of the hierarchy of the castes within the contours of what is elucidated by the Hon'ble Supreme Court in ***Shajan Skaria (supra)*** hereinabove.

22. As such, this Court is of the view that a case against the applicant under *Sections 3(1)(r)/3(1)(s)* SC/ ST Act is *prima facie* made out, especially for the purposes of consideration of the present application seeking grant of anticipatory bail.

23. In view thereof, the submission of learned counsel for the applicant that the remarks in the concerned video were made by the applicant only after provocation by someone online, is devoid of any merit. In any event, the same cannot act as a shield for the applicant to escape his doings, that

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too, whence he was well-aware of what he was saying/ doing. Be that as it may, the said '*provocation*', if any, was not by the named individual. It is also nowhere the case of the applicant that he has subsequently issued any clarification/ explanation/ retraction/ apologies.

24. Consequently, though *Sections 3(2)(va)/3(1)(u)/3(1)(v)/3(1)(w)* SC/ ST Act as well as the provisions of the IT Act and the BNS are also invoked against the applicant, in view of the findings hereinabove *qua Sections 3(1)(r)/3(1)(s)* SC/ ST Act, the same need not to be adverted to at this stage.

25. In view of the afore-going, finding a case under *Sections 3(1)(r)/3(1)(s)* SC/ ST Act to be *prima facie* made out against the applicant, considering the statutory bar of *Sections 18/ 18A(2)* SC/ ST Act read with clear legal position as elucidated above, the present application seeking grant of anticipatory bail, being not maintainable, is dismissed.

26. Needless to say, observations, if any, on the merits of the matter are for the limited purpose of adjudication of the present application and shall have no bearing on the overall proceedings involved.

SAURABH BANERJEE, J.

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