

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CRM(M) No. 63/2026

Reserved on: 24.03.2026
Pronounced on: 02.04.2026
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*Whether the operative part or full
judgment is pronounced-**Full***

Santosha Devi

.....Petitioner

Through :- M/s J. P.Gandhi and
Nipun Gandhi, Advocates.
v/s

UT of J&K & Ors.

.....Respondents

Through :- Mrs. Monika Kohli, Sr. AAG

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

1. Aggrieved of order dated 21.01.2026 passed by learned Principal Sessions Judge (Special Judge) Bhadewah [“the trial Court”], vide which, her application for pre-arrest bail came to be dismissed, petitioner has preferred this composite petition under Section 528 BNSS read with Section 14A(2) of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 [hereinafter referred to as ‘SC/ST Act’].
2. An overview of the prosecution case is that on 09.01.2026, respondent No.2, [“the complainant”] at about 1700 hours, lodged a written report with Police Station, Doda, for registration of FIR against the petitioner, a member of District Development Council Kastigarh and her sons for the commission of cognizable offences during a public function. It was alleged that on 08.01.2026,

during the inauguration of a road at Kastigarh, where MLA Doda, DDC Chairman and DDC vice Chairperson were present as Chief Dignitaries, sons of the petitioner with her connivance and connivance of their supporters, in furtherance of common criminal intention and without any provocation, attacked the complainant and others present at the venue. They indulged in physical violence, use of criminal force, intimidation and threats thereby disturbing public order and creating panic and chaos in the public function. Petitioner, Santosha Devi was armed with a sharp edged weapon, a scissor, with which she inflicted injuries upon the complainant party thereby endangering their lives. Complainant was brutally assaulted and he sustained injuries.

3. Allegation of the complainant, in particular, is that petitioner, with deliberate attempt, publicly abused, humiliated and insulted him by passing caste based derogatory slur “chinal”, knowing fully well that he belongs to ‘Megh’ community a Scheduled Caste category. Entire occurrence was captured in a video recording and photographs were circulated on social media platforms.

4. On the receipt of this complaint, FIR No. 09 of 2026, for offences punishable under Sections 126(2), 115(2), 351(2), 352 BNS read with Sections 3(1)(r) and 3(1)(s) of SC/ST Act came to be registered.

5. The investigating Agency, besides legal formalities recorded statements of key eye-witnesses, under Sections 180 and 183 BNSS. Statements of Lumbardar and Chowkidar of the area also came to be recorded who confirmed that term “Chinal” is locally understood as an abusive caste based slur, linked to “Megh” caste, an SC category intended to insult members of the community. The electronic evidence including videos and photographs of the incident was also collected. Caste certificates of the complainant and accused were obtained from competent authorities, which verified that complainant belongs to ‘Megh’,

a Scheduled Caste category and accused belongs to 'Jaral', Rajput General Category.

6. The investigating agency, thus concluded that offences under Sections 115(2), 352 BNS and 3(1)(r) and 3(1)(s) SC/ST Act were established against accused persons, namely, Santosha Devi, the petitioner and her son Swarn Veer Singh Jaral. Accused Swarn Veer Singh Jaral, who was arrested on 26.01.2026 came to be released on bail by the trial Court on 30.01.2026.

7. Learned trial court rejected bail plea of the petitioner, primarily on the ground that since word "Chinal" has been uttered by her to the complainant, a member of Scheduled Caste, in a public view, *prima facie* ingredients of offences under SC/ST Act are made out.

8. Petitioner has taken an exception to the observation of learned trial court that word 'Chinal' is a derogatory word spoken in local language to Scheduled caste people.

9. According to the petitioner, term "Chinal" can be inferred in two senses, one which can be extracted from the internet; and another from the local language. While, meaning extracted from internet suggests that it is a gender specific word and referred for the women who are harlots, whereas complainant is a male and in local language, word "chinal" is derived from word "China" which means religious symbols and divine weapons such as "Trishuls" and "Flute" and chinal is a person who carries and takes care of such china which cannot be termed derogatory. According to the petitioner, term "chinal" is directed to any person who holds and takes care of the "Chinaand", and in Doda district, such Chinals are worshipped before the commencement of a religious activity.

10. It is contention of the petitioner that on the day of occurrence, she along with MLA Doda West was called to preside over the function for the

inauguration of Road, where it was the complainant, Hakam Chand, who forcibly restrained her from inaugurating the road, manhandled her and thereafter lodged the complaint with an ill-intent to satisfy political vendetta.

11. It is urged by the petitioner that every act of intentional insult or intimidation committed by a person not belonging to SC or ST community would not attract Section 3(1)(r) of the Act merely because it is committed against a member of SC/ST community because the expressions “with intent to humiliate” occurring in Section 3(1)(r) of SC/ST Act are inextricably linked to the caste identity of the person subjected to such intentional insult or intimidation.

12. It is also contended that in order to make out an offence under Section 3 (1) (s) of the Act, it is necessary that accused abuses a member of Scheduled Caste or Scheduled Tribe by caste name within public view, and the allegations must reveal that abuses were laced with caste name or that caste name itself was hurled as an abuse.

13. According to the petitioner, since allegations contained in the FIR do not disclose the commission of any offence under SC/ST Act, the bar mandated by Sections 18 and 18(A)(1) of SC/ST Act is not attracted.

14. The plea has been opposed on the other side by the official respondents predominantly on the ground that present petition for anticipatory bail is not maintainable in view of statutory bar contained in Sections 18 and 18-A of SC/ST Act.

15. It is contention of the respondents that petitioner, not only participated in the assault, but used a sharp edged weapon namely scissors to inflict injuries upon the complainant party thereby endangering the human life and safety of the persons present in a public function and she intentionally uttered a caste based

derogatory slur against the complainant in a public view knowing fully well that he belongs to SC category.

16. According to the respondents, the material evidence in the shape of video recordings and photographs of the incident, including the use of caste based remark, has been collected and the investigating agency has recorded statements of Lumberdar and Chowkidar, amongst others, who confirmed that term “chinal” uttered by the petitioner against the complainant is locally understood as an abusive caste based slur, intended to insult members of SC community. Caste certificates have verified that complainant belongs to ‘Megh’ community, a Scheduled Caste, whereas petitioner/accused belongs to ‘Jaral Rajput’, general category and the utterance of word “chinal” by the petitioner against the complainant is linked to Megh, a Scheduled Caste with which complainant is associated.

17. Heard arguments and perused the file.

18. Before we proceed to dilate upon the grounds urged in the present petition, it shall be apt to have a look at relevant provisions of SC/ST Act and section 438 Cr.P.C.

“Sections 3(1)(r) and 3(1)(s) of SC/ST Act:

3. Punishments for offences of atrocities.-

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

xxx xxx xxx
xxx xxx xxx

(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;”

xxx xxx xxx
xxx xxx xxx”

Sections 18 and 18A of SC/ST Act:

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.-

(1) For the purposes of this Act,—

(a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or

(b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

(2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.]

Section 438 CrPC:

Direction for grant of bail to person apprehending arrest.-

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

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:”

19. Mr. Nipun Gandhi, learned counsel for the petitioner has relied upon **Shajan Skaria v. The State of Kerala [Criminal Appeal No. 2622 of 2024 dated 23.08.2024]**, **Keshaw Mahto @ Keshaw Kumar Mahato v. State of Bihar & Anr. [SLP (Crl.) No. 12144 of 2025 dated 12.01.2026]** and **Prathvi Raj Chauhan v. Union of India & Ors.; AIR 2020 SC 1036** to reiterate the grounds urged in the petition.

20. There cannot be two opinions to the principles of law, expounded by Hon'ble Supreme Court in **Shajan Skaria** (supra), that offence under Section 3(1)(r) of SC/ST Act cannot stand only on the ground that complainant is a member of a Scheduled Caste or a Scheduled Tribe, unless there exists an intention to humiliate him on account of his belonging to such community. Therefore, it was held that where it is apparent from the face of the FIR or the complaint that no ingredient *prima facie* constituting an offence under SC/ST Act is made out, anticipatory bail can be granted and on the contrary, Section 3(1)(r) of SC/ST Act would be attracted where the reason for the intentional insult or intimidation is that person subjected to such conduct belongs to a Scheduled Caste or Scheduled Tribe community, because object behind the enactment is to provide stringent provisions for the punishment of offences targeted against members of Scheduled Caste or Scheduled Tribes communities on account of their caste status.

Relevant observations captured in paras 48 and 49 are as follows:

“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. In a given case, an accused may argue that although the allegations levelled in the FIR or the complaint do disclose the commission of an offence under the Act, 1989, yet the FIR or the complaint being palpably false on account of political or private vendetta, the court should consider the plea for grant of anticipatory bail despite the specific bar of [Section 18](#) of the Act, 1989. However, if the accused puts forward the case of malicious prosecution on account of political or private vendetta then the same can be considered only by the High Court in exercise of its inherent powers under Section 482 of the Code or in exercise of its extraordinary jurisdiction under [Article 226](#) of the Constitution. 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.”

21. A similar view was expressed by Hon’ble Supreme Court in **Prathvi Raj Chauhan** (supra).

22. There is also no quarrel to the preposition of law enunciated by Hon’ble Supreme Court in **Keshaw Mahto** (supra) that in order to constitute offence under Section 3(1)(s) of SC/ST Act, accused abuses a member of Scheduled Caste or Scheduled Tribe by caste name within public view and the allegations must reveal that such abuses were laced with caste name or caste name itself was hurled as an abuse.

Relevant excerpt of the judgment, contained in paras 15 to 17, for the ease of reference have been extracted below:-

“15. Further, for an offence to be made out under Section 3(1)(s), merely abusing a member of a Scheduled Caste or a Scheduled Tribe would not be enough. At the same time, saying caste name would also not constitute an offence.

16. In other words, to constitute an offence under Section 3(1)(s) it would be necessary that the accused abuses a member of a Scheduled Caste or a Scheduled Tribe “by the caste name” in any place within public view. Thus, the allegations must reveal that abuses were laced with caste name, or the caste name had been hurled as an abuse.

17. What appears from the aforesaid is the element of humiliation is present in Section 3(1)(s) as well. It has to be gathered from the intentional insult towards the caste, and the content. The content under Section 3(1)(s) are the abuses hurled at a person belonging to a Scheduled Caste or a Scheduled Tribe. However, the intent with which the abuses were hurled must be found to be denigrating towards the caste, resulting into a feeling of caste-based humiliation.”

23. It is evident from the aforesaid that merely abusing a member of a Scheduled Caste or Scheduled Tribe or merely uttering a caste name by itself would not be sufficient to constitute an offence within the meaning of Section 3(1)(s) of the Act, and it is necessary that accused abuses a member of such community “by the caste name” in any place within public view.

24. It is manifest, as such from the afore-noted pronouncements of Hon'ble Supreme Court that threshold for determining whether an offence under SC/ST Act has been committed is to ascertain whether essential ingredients for constituting such offence are *prima facie* borne out from the FIR or the complaint, as the case may be. As per consistent exposition of law by Hon'ble Supreme Court if necessary ingredients to constitute offence(s) under SC/ST Act are not disclosed on *prima facie* reading of the allegations contained in the complaint or the FIR, bar contained in Section 18 or 18A of SC/ST Act would not apply and Courts, in appropriate cases, can consider the grant of pre arrest bail. However, if ingredients essential for constituting offence(s) are coming forth from a plain reading of the allegations contained in the complaint or FIR, then remedy of anticipatory bail is not available. Nobody can take an exception to this settled position of law.

25. Mr. Nipun Gandhi, learned counsel for the petitioner, at the foremost has argued that meaning of the term "chinal" as gathered from the internet, suggests that it is a gender- specific word referring to a woman, whereas complainant is a male, and in local language "chinal" is derived from word "china", which means religious symbols or divine weapons such as "Trishool" and "Flute" and "chinal" is a person who carries or takes care of such "chinna" which cannot be termed derogatory. Thus, according to the petitioner, term "chinal" is used for a person who carries and takes care of "Chinanaand" and is not specific to Scheduled Castes or Scheduled Tribes, and in Doda District such "chinnals" are worshiped before commencement of religious activity.

26. It is trite that Courts in exercise of criminal jurisdiction to consider a bail plea cannot embark upon a "mini trial" to resolve factual disputes. The primary focus of the court in such cases is that whether necessary ingredients to constitute an offence from a plain reading of the FIR or the complaint, as the

case may be, are *prima facie* made out or not. Disputes questions of facts cannot be gone into. Therefore, whether word “chinal”, alleged to have been uttered by the petitioner against the complainant, is caste-based, gender-specific, or a religious symbol, can only be decided during a full-dressed trial. Such disputed questions of fact cannot be gone into by this Court in exercise of its criminal jurisdiction to consider a bail plea. The threshold for determination, as consistently ruled by Hon’ble Supreme Court, is whether the ingredients necessary to constitute an offence under SC/ST Act are *prima facie* disclosed from a plain reading of the FIR or the complaint or not.

27. Mr. Nipun, learned counsel for the petitioner, has vehemently argued that Constitution (Jammu and Kashmir) Scheduled Castes Order, 1956, published on 31.10.2019 [“SC Order of 2019”], provides a list of 13 Scheduled Castes, and since “chinal” does not figure in the said list, it cannot be termed a caste name, and as such no offence under SC/ST Act is made out.

28. It is pertinent to note that investigating agency, during investigation, recorded statements of key witnesses, including lumberdar and chowkidar of the area, under Sections 180 and 183 BNSS. The lumberdar and Chowkidar, in their statements, have confirmed that term “chinal” is locally understood as an abusive caste-based slur linked to “Megh”, a Scheduled Caste. Notably, “Megh” is one of 13 Scheduled Castes mentioned in the list of SC Order of 2019. Therefore, contention of learned counsel for the petitioner that since term “chinal” does not figure in SC Order of 2019, it cannot be termed a caste name, or an abuse by caste name, is misconceived.

29. Mr. Gandhi, by reference to Black’s law Dictionary, next submitted that a verbal abuse by means of a single word *per se* would not be sufficient to constitute an offence under SC/ST Act.

30. The argument of learned counsel for the petitioner is legally flawed for the following reasons.

31. Though “Verbal Abuse” has been defined in Black’s Law Dictionary (12th ed. 2024), *as an emotional abuse inflicted by one person on another by means of words, esp. Spoken words, in a way that causes distress, fear, or similar emotions. Verbal abuse may include name-calling insults threatening gestures, excessive and unfounded criticism, humiliation, and denigration.*”, the petitioner, in the present case, is alleged to have committed an offence within the meaning of Section 3 (1) (s) of SC/ST Act, which came to be considered in detail by Hon’ble Supreme Court in **Keshaw Mahto** (Supra), whereby it was held that to constitute an offence under Section 3(1)(s) of the Act, it is necessary that accused abuses a member of the SC or ST community “**by the caste name**” in any place within public view. Therefore, the necessary ingredients to constitute offence under Section 3(1)(s) of SC/ST Act are that:

- (i) accused is not a member of a Scheduled Caste or a Scheduled Tribe;
- (ii) he abuses a member of a Scheduled Caste or Scheduled Tribe by caste name, and
- (iii) he does so in any place within public view.

32. It is manifest from the above that an abuse by a person not being a member of a Scheduled Caste or Scheduled Tribe, directed against a member of such community “**by caste name**” in any place within public view, is sufficient to constitute an offence within the meaning of Section 3(1)(s) of the Act and whether such abuse consists of a single word or more than one word shall be immaterial for the purpose. If ingredients necessary to constitute offence under Section 3(1)(s) of the Act are made out, accused is liable to be prosecuted and bar of pre-arrest bail shall be attracted.

33. Here, we may gainfully refer to a three-Judge Bench verdict of Hon'ble Supreme Court in **Kiran vs. Raj Kumar Jivraj Jain & Anr.** [SLP (Crl) No. **8169 of 2025 dated 01.09.2025**, where accused persons abused a member of "Matang Community" by using the caste expression "Mangtyano", and bail granted by Aurangabad, Bench of High Court of Judicature at Bombay came to be set-aside by Hon'ble Supreme Court.

34. True it is that not every insult against a member of a SC/ST community qualifies as an offence under SC/ST Act, if it lacks caste based humiliation. Mere uttering a caste name or abusing someone in a private dispute without specific caste name intent to humiliate would not constitute an offence under the Act because core of the offence is the intent to humiliate someone specifically because of his caste identity. In other words, the insult or abuse must be intentionally targeted at the victim for the reason that he belongs to a Scheduled caste or Scheduled Tribe rather than just a general abuse in a sudden fight. Therefore, even a single caste-based abuse shall be sufficient to make out an offence under SC/ST Act, if it is linked to victim's caste and intended to humiliate him in "public view." The requirement of law is that it is not a generic abuse or insult, but accused must know that victim belongs to an SC/ST community and the utterance specifically targets that identity in public view.

35. Having said so, the question which falls for consideration in the present case, is whether the ingredients essential to constitute offences under Section 3(1)(r) and 3(1)(s) of SC/ST Act are *prima facie* borne out from a plain reading of the allegations contained in the FIR or not.

36. It is a matter of common experience that once a person decides to frame somebody in a false case, he would design the complaint in a fashion to create an illusion of the existence of ingredients necessary to constitute an offence. An attempt can be made to circumvent legal barriers by creatively phrasing the facts

and avoid mentioning the actual background. A minor offence may be camouflaged and given the texture of a special offence or a graver offence with a veiled object of persecution rather than prosecution of an accused. In such cases, courts are not obliged to accept, what is stated in the FIR or the complaint as a gospel truth. Courts are required to focus on the substance of the averments and scrutinize the allegations contained in the FIR or the complaint to ascertain if it genuinely discloses the commission of an offence or not.

37. Hon'ble Supreme Court in **Shajan Skaria** (supra) has held that in the circumstances of a case, Court should not shy away from conducting a preliminary enquiry to determine if the narration of facts in the complain/FIR, in fact discloses the essential ingredients required to constitute an offence under the Act or not. Since the entire incriminatory material in the said case, based upon which the complaint came to be lodged by the complainant was available in the public domain, on social media platforms, Hon'ble Supreme Court went through the transcript of the You tube video, in addition to verification of the averments in the complaint and found that there was nothing in the transcript of the uploaded video to indicate even *prima facie* that allegations were made by the accused on account of the fact that complainant belongs to scheduled caste category. Therefore, in the background of this fact situation of the case, the applicant/accused came to be enlarged on bail in anticipation of arrest.

38. In the present case, allegation against the petitioner is that in a public programme organized for the inauguration of a road, she and her sons, in furtherance of common criminal intention and without any provocation, violently attacked the complainant and others present at the venue. Applicant was armed with a scissor, a sharp edged weapon, with which she inflicted injuries upon the complainant party thereby endangering their lives. The complainant thereafter alleged that applicant during the occurrence, publicly abused him by passing

caste based derogatory slur "Chinal" knowing fully well that he belongs to Megh, a Scheduled Caste Category. It was alleged by the complainant that applicant had humiliated and insulted him with deliberate intent in a public view.

39. It is categoric stand of the respondents that material evidence in the shape of video recordings and photographs of the incident, including the use of caste based remarks by the petitioner has been collected by the investigating agency.

40. Mrs. Monika Kohli, learned counsel for the respondents, has argued that it is not only the electronic evidence collected by the investigating agency which depicts caste-based abuse by the petitioner, but the petitioner, after the incident, made a press statement wherein she admitted having abused the complainant in terms of caste.

41. I have gone through video recording of the alleged occurrence as also the press conference of the petitioner in order to verify claim of the respondents that electronic evidence clearly depicts caste-based abuse by the petitioner. Although the petitioner, in the video recording collected by the investigating agency, can be seen assaulting someone, however, in so far as, offences under sections 3(1)(r) and 3(1)(s) of SC/ST Act are concerned, nothing incriminating is discernible from the recording. What can be seen or heard in the recording is only commotion. Nothing is clearly audible. Similarly, in video recording of the press conference, alleged to have been conducted by the petitioner, though she admitted that she assaulted the complainant party in self-defence, there is no assertion or admission on the part of the petitioner that she, at any point of time, abused the complainant by his caste name. Therefore, there is nothing in the transcript of the video recording or the press conference to even prima facie indicate that necessary ingredients to constitute offences under Sections 3(1)(r) or 3(1)(s) of SC/ST Act are made out against the petitioner, though rest of the offences, under penal laws may be constituted.

42. Hence, present petition is allowed, and petitioner, in the event of arrest is directed to be released on bail on furnishing a surety bond in the amount of Rs. 25,000/- and a bond of personal recognition of the like amount, subject to the following conditions that:-

- i. she shall not leave territorial jurisdiction of the concerned Police Station without prior permission of the trial court;
- ii. she shall appear before the Investigating Officer, as and when called and co-operate in the investigation;
- iii. she shall attend in accordance with the conditions of the bail bonds;
- iv. she shall not commit an offence similar to the offence of which she is accused, or suspected; and
- v. she shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

43. It is, however made clear that nothing said in this order shall be construed as an expression of opinion on the merits of the case and learned trial court shall be at liberty to go ahead with the trial uninfluenced by any observation made in this order.

44. Disposed of.

(Rajesh Sekhri)
Judge

JAMMU
02.04.2026.
Paramjeet