Karnataka High Court Chikkappa And Ors. vs State By Sub-Inspector Of Police, ... on 19 October, 2001 Equivalent citations: 2002 CriLJ 518, ILR 2001 KAR 5483, 2002 (1) KarLJ 61 Bench: S Bannurmath ORDER The Court 1. Heard the learned Counsel for the petitioners and the learned Government Advocate for the respondent. 2. Apprehending arrest in Cr. No. 101 of 2001 (wrongly shown as 360 of 2001 in the petition) of Hangal Police Station registered for the offences punishable under Sections 143, 147, 323, 430, 447, 504 and 506 read with Section 149 of the IPC as well as under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as the "Act") the petitioners have approached this Court in the present petition inter alia contending that the petitioners are innocent and they have been arraigned as accused with vengeance due to previous enmity. It is also contended that, though the alleged incident is said to have taken place on 7-9-2001, filing of the complaint almost after 11 days of the incident especially involving the petitioners with the offence under the Act is to wreck vengeance and is done with much deliberation and as such it is prayed that the petitioners be released on anticipatory bail on the terms deem fit by the Court. 3. On the other hand, learned Government Advocate appearing for the respondent-State submitted that the petition under Section 439 of the Cr. P.C. Itself is barred in view of Section 18 of the Act and as such the petition is liable to be rejected as not maintainable one. In reply, learned Counsel for the petitioners contended that- right of liberty is a fundamental right guaranteed under Article 21 of the Constitution of India and as such there cannot be any restriction placed even by any enactment. It is contended that keeping in view possibilities of false and vexatious complaint being launched against innocent persons, the provisions of Sections 438 and 439 have been incorporated in the Code of Criminal Procedure, whereunder the Courts can go into the question of prima facie existence of a case of commission of offence and necessity of keeping a person in custody immediately after his arrest especially keeping in view the fact that trial takes a lot of time and being of a lengthy procedure. Hence, it is contended that if such right to approach the Courts seeking bail is denied even if the prosecution based on false and malicious grounds has been launched, it would be causing injustice to innocent persons like the present petitioners. It is contended that when the High Courts or the Apex Court have powers and jurisdiction to quash the criminal proceedings at the very inceptional stage irrespective of nature of offence on the grounds of absence of prima facie material, the jurisdiction to enlarge a person even on anticipatory bail cannot be curtailed by Section 18 of the Act. 4. On considering the rival contentions, at the outset it would be necessary to consider the scope and applicability of Section 18 of the Act especially when the petitioners have directly approached this Court under Section 438 of the Cr. P.C. and to find out whether there is absolute bar or not for invoking the provisions under Section 438 of the Cr. P.C. as per Section 18 of the Act. Section 18 of the Act reads as follows: "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". 5. Thus by bare reading of Section 18 it appears that the provisions of Section 438 of the Cr. P.C. cannot

be invoked by any person if he is accused of the offence punishable under the Act. 6. The constitutional validity of the Act is upheld by the Hon'ble Supreme Court in the case of State of Madhya Pradesh and Anr. v. Ram Kishna Balothia and Arr. In this pronouncement so far as aims and objects of the Act, Section 18 of the Act and Section 438 of the Cr. P.C. are concerned, it is observed thus: "Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they re- mam 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. 2. ..... When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes. .... . . A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary". "The above statement graphically describes the social conditions which motivated the said legislation. It is pointed out in the above Statement of Objects and Reasons that when members of the Scheduled Castes and Scheduled Tribes assert their rights and demand statutory protection, vested interests try to cow them and terrorize them. In these circumstances, if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form distinct class by themselves and cannot be compared with other offences. We have next to examine whether Section 18 of the said Act violates, in any manner, Article 21 of the Constitution which protects the life and personal liberty of every person in this country. Article 21 enshrines the right to live with human dignity, a precious right to which every human being is entitled; those who have been for centuries, denied this right, more so. We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code. The Law Commission in its 41st Report recommended introduction of a provision for grant of anticipatory bail. It observed: 'What agree that this would be a useful advantage. Though we must add that it is in very exceptional cases that such power should be exercised'. In the light of this recommendation, Section 438 was incorporated, for the first time, in the Criminal Procedure Code of 1973. Looking to the cautious

recommendation of the Law Commission, the power to grant anticipatory bail is conferred only on a Court of Session or the High Court. Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non- application to a certain special category of offences cannot be considered as violative of Article 21". Thus, the Apex Court has held that prohibition of invoking provisions of Section 438 as per Section 18 of the Act is not violative of Article 21 of the Constitution. As such, the contention of the learned Counsel that Section 18 of the Act is violative of the fundamental rights guaranteed under the Constitution of India has no merit at all. 7. Thus it is to be held that Section 18 of the Act creates a bar and is not violative of the fundamental rights guaranteed under the Constitution of India. But then does it mean that the moment a complaint/first information is filed alleging commission of the offence under the Act, such accused cannot approach the Courts seeking anticipatory bail at all, or, in other words does it mean that mere registration of a case under the Act would ipso facto attract the prohibition contained in Section 18 of the Act? 8. In this regard we have to keep in mind the long standing ancient though evil practice of untouchability and the steps taken in this regard by the lawmakers to eradicate such evil by making such practice of untouchability, an offence, first by protection of Civil Rights Act and now by the Act. 9. As the aims and objects of the Act indicate, it is clear that the same has been enacted to prevent the commission of the atrocities against the members of the Scheduled Castes and Scheduled Tribes. Severe punishments have been provided for various offences under the Act in clause (1) of Section 3 and commission of offences under the Indian Penal Code on such Scheduled Castes and Tribes under clause (2) of Section 3 of the Act. 10. No doubt, prohibition of seeking relief of anticipatory bail is also introduced under Section 18 of the Act, but the question whether by mere allegation and registration of an offence under the Act ipso facto attracts such prohibition. 11. In this regard following pronouncements of various Courts are necessary to be looked into. In the case of Thavam v State of Tamil Nadu, it is held thus: "Provisions of Section 438 of the Cr. P.C. cannot be said to be applicable in each and every case. Where the allegations do not make out any prima facie offence punishable under any of the provisions of the Act, the bar under Section 18 is inapplicable and the provisions of Section 438 of the Cr. P.C. can be availed of". 12. In the case of Ramesh Prasad Bhanja and Ors. v. State of Orissa, Orissa High Court has held thus: "Provisions of Section 438 of the Cr. P.C. cannot be said to be applicable in each and every case". 13. In the case of Pankaj Sutar v. State of Gujarat, has taken a view that "the view that no Court can embark upon such hazards of refusing anticipatory hail on mere doubtful accusations and assumptions that the Act is applicable and no Court could and should be permitted to be spoon-fed by the complaint whatever he wants to feed and swallow, whatever he wants the Courts to gulp down to attain and secure his unjust mala fide motivated ends". 14. Similarly in Rakesh and Others v State of Rajasthan and Girid-hari Lal v State of Rajasthan (sic), it is held that Section 18 of the Act does not create a complete bar even to the

maintainability of an application under Section 438 of the Cr. P.C. and judicial scrutiny is permissible to examine facts of a case to find out whether prima facie an offence under the Act has been committed or not. The stringent provisions of Section 18 cannot be allowed to be misused and that object can be achieved only if judicial scrutiny is made permissible to find out whether an offence under the Act has been committed by a person before refusing him anticipatory bail. 15. Taking into consideration all these decisions, in my view, though Section 18 of the Act creates a bar for invoking provisions of Section 438 of the Cr. P.C., still it is open for the higher forum like High Court to see whether prima facie case is made out to sustain the prosecution. It is to be noted that under Section 482 of the Cr. P.C. while exercising inherent jurisdiction High Court can go into question of prima facie existence of material to show commission of any offence and if the Court is satisfied about its absence as laid down in various pronouncements of the Apex Court right from Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Ors., State of West Bengal and Ors. v. Swapan Kumar Guha and Ors., State of Karnataka v. L. Muniswamy and Ors., and the recent landmark pronouncements in the case of State of Haryana and Ors. v. Ch. Bhajan Lal and Ors. and in the case of Pepsi Foods Limited and Anr. v Special Judicial Magistrate and Ors., then it is certainly open to quash the entire proceedings at the threshold itself. As such, why not consider the anticipatory bail application even for a limited purpose as to see whether prima facie case is made out to show commission of the offence under the Act? if no case is made out for the offence under Section 3 of the Act, irrespective of bar under Section 18 of the Act, in my view in such cases application under Section 438 of the Cr. P.C. can be considered. This view of mine is supported by the Full Bench decision of Rajasthan High Court in the case of Virendra Singh v State of Rajasthan. The Full Bench has observed thus: “18. In the matter of R.K. Balothia, supra, although the consideration was only in regard to the challenge to the constitutional validity of the Act of 1989 and Section 18 of the said Act in particular while dealing with the same, the arguments which have been advanced by some of the Counsels in this reference regarding extent of the scrutiny of material and maintainability of the application also impliedly under consideration and although the Apex Court expressly did not enter into the question as to what extent the Courts would enter into scrutiny of material, the tone and tenor of the entire judgment is more than a pointer to the inference that once a person is accused of an offence under Section 3 of the Act of 1989, his remedy seeking anticipatory bail is completely barred and as observed in Rakesh’s case, supra, by the Apex Court in Cr. Appeal No. 640 of 1996, dated 7-5-1996 the Courts would not be justified in entertaining the application for anticipatory bail once an offence under the Act of 1989 is disclosed in the FIR. In view of the ratio of these two judgments, there is no scope left for this Full Bench to enter into the question regarding the extent and scope of interpretation of Section 18 of the Act of 1989 on the ground of curtailment of personal liberty for once a person is accused of an offence and a case is registered against him, under the Act of 1989, the Court of Session and the High Court in view of the clear bar of Section 18 of the Act of 1989 would clearly be precluded from entering into the

enquiry of the allegations levelled against the accused and we find substance in the contention that if the Courts are permitted to enter into a rowing enquiry in regard to the allegations, the whole purpose and effect of the section would be totally defused and would make it totally otiose and redundant. This is also the ratio which is clearly reflected from the case of Ram Kishna Balothia, referred to hereinbefore as in the said case, the same set of arguments were advanced that if the Courts are precluded from entering into the enquiry into the allegations there would be complete negation of the right to liberty envisaged in the Constitution. We are afraid that if an interpretation of Section 18 is made in a manner so as to permit scrutiny of materials into the case diary, charge-sheet, statements of the witnesses and other materials on record, it would be difficult to make a distinction between usual application for anticipatory bail and the one filed in a case alleged against an accused under the Act of 1989. It has to be borne in mind that if a person is even alleged of accusation of committing an offence under the S.C. S.T. Act of 1989 the intention of Section 18 is clearly to debar him from seeking the remedy of anticipatory bail and it is only in the circumstances where there is absolutely no material to infer as to why Section 3 has been applied to implicate a person for an offence under the Act of 1989 the Courts would be justified in a very limited sphere to examine whether the application can be rejected on the ground of its maintainability. What is intended to be emphasised is that while dealing with an application for anticipatory bail, the Courts would be justified in merely examining as to whether there is at all an accusation against a person for registering a case under Section 3 of the Act of 1989 and once the ingredients of the offence are available in the FIR or the complaint, the Courts would not be justified in entering into a further inquiry by summoning the case diary or any other material as to whether the allegations are true or false or whether there is any preponderance of probability of commission of such an offence. Such an exercise in our view is intended to put to a complete bar. against entertainment of application of anticipatory bail which is unambiguously laid down under Section 18 of the Act of 1989, which is apparent from the perusal of the section itself and thus the Court at the most would be required to evaluate the FIR itself with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of the ingredients constituting the alleged offence. In our opinion, the Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegation made in the FIR or the complaint by calling for the case diary, charge-sheet or any other material gathered at the time of investigation but, if the allegations in the FIR or the complaint even if they are taken at their face value are accepted in their entirety do not constitute the offence alleged. It is only upon those miniscule number of cases, the Courts would be justified in entertaining the application, not because it is maintainable but clearly because the Act would be inapplicable in the facts and circumstances of that particular case. Thus the application for anticipatory bail can be entertained only on the ground of inapplicability of the Act of 1989 due to the facts of the case which will have to be gathered only from the FIR and not beyond that because once it is gathered from the FIR that the applicant is an accused of committing an

offence laid down under Section 3 of the Act of 1989, the bar of Section 18 would instantly operate against the person who has been made an accused of the offence under the Act of 1989. To put it differently, once it is apparent from the FIR that an offence under the Act of 1989 is even alleged, the Courts would not be justified at all in weighing or scrutinising the preponderance of the probability of commission of the offence by the accused, but if from the FIR itself the ingredients of offence as laid down under Section 3 of the Act itself is found to be missing, the bar created by Section 18 would not be allowed to operate against an accused and only in that event his application for anticipatory bail would be dealt with by the concerned Court to determine whether the Act of 1989 can be said to be rightly applicable against the accused and not to enter into further enquiry into the matter so as to determine whether the allegations levelled against the accused in the FIR are true or false and there would be no justification to enter into the matter further in order to examine whether the allegations levelled against the accused are even prime facie correct or incorrect. Any other interpretation, in our opinion, would go against the letter and spirit of the clear provisions of Section 18 of the Act of 1989 which has already stood the test of reasonableness and constitutional validity upto the level of the Apex Court". (emphasis supplied) Of course, this exercise of finding out prima facie material allegation in my view should be very limited and to be exercised by the High Court alone. The Court will have to take a look at the first information/complaint and the allegations made therein to find out whether the essence of the offence under the Act is made out. If Court finds such, material, then it has to reject the application under Section 438 of the Cr. P.C. as prohibited by Section 18 of the Act. On the other hand, if no prima facie case is made out to show commission of the offence under the Act, certainly, this Court can consider the application under Section 438 of the Cr. P.C. 18. Keeping this in view, let me consider the case on hand. 17. As per the complaint dated 18-9-2001 it is alleged that in respect of drawing of water through a canal from Kamanahalli lake, there used to be frequent quarrels amongst the complainant and the neighbouring landowners; that on 7-9-2001, in the morning when the complainant along with his brothers were drawing water to his field the petitioners (named) and some others (unnamed) came and obstructed the water flow by breaking the canal wall and when the complainant questioned them, all of them saying that: which, if translated, means "Lo, Holeya (caste name), your arrogance has reached a peak. We have come to stop your drawing of water. We will break your legs and arms. We do not care for the consequences as we have come prepared for it" and so saying they assaulted us with hands. . . ". It is further stated that"we informed our community people, but as they could not come to any conclusion as to the course of action we are lodging the present complaint in the police station. We are complaining the act of the accused of assaulting us and committing atrocity by referring to caste name in order to cause loss to us by not allowing us to draw water and thereby to destroy our life". 18. On the basis of this complaint now a case in Cr. No. 101 of 2001 for the offences under Sections 143, 147, 323, 430, 447, 504 and 506 read with Section 149 of the IPC as well as for the offence under Section 3(l)(x) of the Act is also registered. 19.

On going through this complaint, it prima facie appears to me that there was ill-will or quarrel between the complainant on the one hand and other villagers (mostly neighbouring landowners) on the other, regarding drawing of water from the canal to the field. It is admitted in the complaint itself that in this regard there used to be frequent quarrels between them and that on 7-9-2001 one such quarrel took place where the accused/petitioners and some other villagers not only prevented the complainant from taking water but also abused, threatened and assaulted them. It cannot be disputed that these acts on the part of the accused will squarely fall within the purview of the offences under Sections 143, 147, 323, 430, 447, 504 and 506 of the IPC. But, then how it falls within purview of the offence under Section 3(l)(x) of the Act? And the answer to it would be the narration of the complaint calling them 'Holeya, Madiga, Soole Makkala'. The words 'Holeya and Madiga' are referable to Scheduled Castes and the word 'Soole Makkala' means 'sons of prostitutes'. 20. If one peruses the provisions of Section 3(l)(x) of the Act which is the offence alleged against the petitioners, the necessary ingredients of the offence are: (A) intentional insult or intimation; (B) with intend to humiliate; (C) a member of Scheduled Caste or Scheduled Tribe; (D) in any place within public view. 21. By analysing the entire offence under Section 3(l)(x), in my view there must be intentional insult or intimidation with an intent to humiliate a member of SC or ST in a place within public view by a member of non-SC/ST. 22. As observed by the Allahabad High Court in 1981 Criminal Law Cases page 1 and the observations of the Madras High Court in Baste Subrayalu v. Robert Mariadassou, and the observations of Bombay High Court in the case of Shantabai and Another v State of Maharashtra, merely calling a person by his caste name though may amount to insult or abuse, it cannot be said to be with an intent to humiliate such a person. 23. Keeping in view the aims and objects of the act of punishing the offence of untouchability and commission of atrocities on the persons belonging to SC and ST, added to this, it must be noted that as per Section 3 itself, it must be prime facie shown that the accused is not a member of SC or ST and this humiliation by way of intentional insult or intimidation was conducted in a place, within public view. 24. As the opening sentence of Section 3 itself shows"Whoever, not being a member of Scheduled Caste or Scheduled Tribe", there must be prima facie affirmation or say in the complaint that the accused are not the members of SC or ST. 25. In the present complaint, absolutely there is no averment to the effect that the accused-petitioners belonged to any higher caste or at least that they are not members of SC or ST. This being the basic and main ingredient and its absence will have significant impact as to the applicability of Section 18 of the Act. 26. If the words"Holeya" or "Madiga" are taken out from the complaint for a moment, then the other utterances that: though indicate that there was intimidation but does not indicate that there was any insult or intimidation "to humiliate" the complainant who belonged to SC or ST. 27. Apart from no averment regarding petitioners belonging to non-SC or non-ST, there is no averment in this case regarding humiliation within public view also which in my view is a must and necessary averment. Unless this is done then, in my view, there could not be any commission of offence. The averment de hors the

name of particular caste in the present complaint would amount to intimidation and threat given by the petitioners to the complainant for drawing of the water and these acts including further allegation to assault even if accepted on their face, would fall under the purview of provisions of IPC with which, of course the petitioners are also charged for. 28. Moreover, the use of words "the intentional" in the opening wordings under Section 3(l)(x) indicate that there must be metis rea and the object of such insult or intimidation is "to humiliate". As such, if the entire picture of the incident as alleged by the complainant is taken into account, prima facie it appears to me that it was a simple case of quarrel between two parties regarding taking of water and as in fact admitted by the complainant himself, this quarrel was going on for some time. It appears that on the date of incident it burst into further action by threats, abuses and obstruction on the part of the accused including the alleged assault. 29. It is also to be noted that the specific words "in a place within public view" indicates that the Act of intentional insult or intimidation with an intent to humiliate must be caused in a place within public view. It is well-settled that as in the case of defamation, mere indication of defamatory words by a letter between two parties inter se by itself would not amount to defamation unless there is publication, meaning thereby bringing it such insult or defamatory statement to the knowledge of others or public. Similarly, in the present case, the humiliation in my view must be in a place within public view. If a person is abused and even humiliated in a close confined place where public had no access or no public was present, then, taking into consideration, the specific words, it may not, in a given case amount to commission of offence under Section 3(l)(x) of the Act, as observed by this Court in the case of Channegowda v. State, followed in Chandra Poojari v. State by Seshadripuram Police, Bangalore. 30. Taking into consideration all these aspects in detail and on detailed considerations of various pronouncements referred to above by different High Courts, in my view, in spite of bar under Section 18 of the Act for invoking provisions of Section 438 of the Cr. P.C., it is still open to this Court to see whether there is prima facie case made out by the Complainant, by just looking into the complaint itself. If there is no prima facie material to hold that offence under Section 3 of the Act is committed, then, in my view, the bar under Section 18 of the Act cannot be invoked and in such event the case becomes regular case under Section 438 of the Cr. P.C. and nothing more. 31. On entire consideration of the material allegations in the present case, in my view, in the absence of specific averments in the complaint itself, (a) that the petitioner accused not belonged to SC or ST; (b) in the absence of any material to show that the intentional insult or intimidation was only with an intent "to humiliate"; and (c) such intentional insult or intimidation "to humiliate" was done in a place within public view, it can be safely held at this stage that there is no material to prima facie hold that the petitioners have committed an offence under Section 3(l)(x) of the Act and as such, this Court can consider the application under Section 438 of the Cr. P.C. filed by the petitioners in spite of bar under Section 18 of the Act. 32. Taking into consideration, the allegations "apart from offences under the Act", the remaining offences alleged against the petitioners are commission of

offences under Sections 143, 147, 323, 430, 447, 504 and 506 read with Section 149 of the IPC and in such cases anticipatory bail can be granted. But keeping in view the views expressed by the Apex Court regarding invoking Section 438 of the Cr. P.C., and the power to be exercised rarely that too for the limited period, interim bail can be granted so as to enable the accused to surrender and obtain regular bail since he cannot avoid interrogation and appearing before the police for investigation, though I am not inclined to grant absolute anticipatory bail to the petitioners, in my view, it would be just and appropriate to grant interim bail for a limited period of four weeks so as to enable the petitioners to surrender and obtain regular bail before the jurisdictional Court. 33. Hence in case of surrender of the petitioners 1. Chikkappa, S/o. Guddappa Hosmani; 2. Siddappa, S/o. Pradhanappa Hegde; 3. Hanu-manthappa, S/o. Irappa Desai; 4. Shivappa, S/o. Malappa Hawaii; and 5. Prakash, S/o. Basappa Desai, in Cr. No. 101 of 2001 (wrongly shown as 360 of 2001 in the petition) of Hangal Police Station for the offences under Sections 143, 147, 323, 430, 447, 504 and 506 read with Section 149 of the IPC before the jurisdictional Committal Court, they shall be released on interim bail for a limited period of four weeks on the following terms and conditions: 1. Each of the petitioners 1 to 5 shall execute a bond for a sum of Rs. 25,000/- with two sureties for the like sum subject to the satisfaction of the Committal Court; 2. That petitioners 1 to 5 shall furnish their permanent residential address to the jurisdictional Police and Court; 3. That petitioners shall make themselves available to the investigating officer and police for interrogation as and when required and shall co-operate with the police; 4. That petitioners 1 to 5 shall give attendance once in two weeks i.e., every alternate Sunday between 11 a.m. and 2 p.m. before the Hangal Police Station, Haveri District; 5. That petitioners 1 to 5 shall not leave the jurisdiction of Haveri District without prior or express permission of the Committal Court; 6. That the petitioners are at liberty to make an application under Section 437/439 of the Cr. P.C. before the competent Court for grant of bail within 4 weeks from today. If the petitioners fail to make such an application within the aforesaid period, this interim order shall cease to be effective on the expiry of 4 weeks; 7. if the petitioners make an application under Section 437/439 of the Cr. P.C. within 4 weeks from today, this interim bail granted today shall remain in force till the date of disposal of such application; and 8. The Court shall dispose of the application expeditiously, uninfluenced by the grant of this interim bail order. 34. It is made clear that if any of the petitioners misuse the bail permitted, the investigating officer or even the aggrieved person to move the Sessions Court or the High Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail. 35. Before parting, it is made clear that the observation regarding merit is only for the limited purpose of considering availability of prima facie material and should not be construed during trial as final pronouncement on merits of the case. It is left open to the Trial Court to consider the entire case on merits based on appreciation of entire evidence. 36. Accordingly, this criminal petition is disposed of.