

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

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Bail App No. 168/2026

c/w

CRM(M) No. 801/2026

CrlM No. 1435/2026

Devinder Singh and ors.

...Petitioner /Appellant(s)

Through: - Mr. Rahul Pant, Sr. Advocate with
Mr. Aniruddh Sharma, Advocate

Vs.

Union Territory of J&K

...Respondent(s)

Through: - Mrs. Shazia Asaf, Advocate vice
Mr. P. D. Singh, Dy. AG
Mr. Abhishek Singh Parihar, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

08.10.2026

1. Through the medium of afore-titled petition filed under Section 528 of the BNSS, 2023 bearing CRM(M) No. 801/2026, the petitioners have challenged FIR No. 0124/2016 for offences under Sections 79, 351(2), 352, 3(5) of the BNS, 2013, and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the SC/ST Act"), registered with Police Station Bishnah. In terms of Bail App. No. 168/2026, the petitioners have sought bail by surrender in the aforesaid FIR.
2. It appears that a written complaint was lodged by respondent No. 2/complainant with the Police on 13.07.2026. In the complaint, it

was stated by the complainant that her husband, Shri Vinod Kumar Hans, belongs to the Scheduled Caste community and he has suffered 75% permanent disability. According to the complainant, she, along with her afore-named husband, are the owner in possession of an open plot of land situated at Bishnah, and the petitioners, taking undue advantage of the physical condition of husband of the complainant, have been attempting to threaten and dispossess them from the said plot. It is alleged that on 9th July, at around 12:47 PM, the petitioners, along with 3/4 unidentified persons, entered the said open plot without any authority or permission. It is submitted that the plot of land in question abuts a public road and is open from all sides. The petitioners are alleged to have abused the complainant with filthy, obscene and caste-based language by repeatedly referring to the complainant and her husband as “Chamar” and “Chamarin”, with the deliberate intention of insulting and humiliating them on the basis of the Scheduled Caste identity of her husband. Petitioner Amit Gupta is alleged to have repeatedly shouted the words “Latt mar kar nikalo charmin ko”, inciting the other associates to assault the complainant. Petitioner Rakesh Gupta is alleged to have used highly obscene and caste-based abuses against the complainant and her husband. It has further been alleged that the accused persons uttered obscene words of sexually offensive nature with an intention to insult the modesty of the complainant. The petitioners are further stated to have threatened the complainant, causing her to apprehend that the accused may attack her and her minor daughter.

3. On the basis of aforesaid allegations, the Police registered the impugned FIR and started investigation of the case. It appears that the petitioners had approached the Court of the learned Principal Sessions Judge, Jammu (Special Judge), for grant of bail, but their application has been dismissed by the learned Special Judge vide order dated 25.07.2026. The petitioners have sought quashment of the impugned FIR and have also sought bail in the said FIR by way of the present petitions.
4. It appears that this Court, while entertaining the petition under Section 528 of the BNSS, passed the interim direction dated 03.08.2026, whereby it was provided that the investigation in the said FIR may go on, but in case the same concludes in a charge sheet, filing of the charge sheet would await.
5. It is the case of the petitioners that respondent No. 2/complainant and her husband had leased out their plot of land measuring 1155 square metres, situated at Village Chak Lala, Sheora, Tehsil Bishnah, District Jammu, falling under Khasra No. 465/392, along with the super-structure, to M/s Hindustan Petroleum Corporation Limited for establishing a retail outlet dealership, which was awarded to the husband of respondent No. 2/complainant. The complainant and her husband were operating the retail outlet on the said plot of land under the name and style of “M/s Gasolene Filling Station, Chak Lala”.
6. According to the petitioners, respondent No. 2/complainant, along with her husband, entered into an agreement to sell in respect of 03 kanals of land falling under Khasra No. 465/392, situated at Village Chak Lala, Sheora, with petitioner No. 1 for a total sale consideration of Rs. 2.50

crores. It has been submitted that, as per the terms of the agreement, even the licence of the retail outlet of M/s Hindustan Petroleum Corporation Limited, that was being operated by respondent No. 2/complainant and her husband, was to be transferred to the name of petitioner No. 1. It has further been stated that an amount of Rs. 1.70 crores stands paid to the complainant at the time of execution of the agreement to sell and the balance payment was to be made at the time of registration of the sale deed of the land and transfer of the licence of the retail outlet/petrol pump. In this regard, the petitioners have placed on record a copy of agreement to sell dated 28.10.2024. It has been submitted that pursuant to the aforesaid agreement to sell, operation of the petrol outlet was handed over to petitioner No. 1 on 06.11.2024 for its operation, but the same was still being operated in the name of the husband of respondent No. 2/complainant.

7. It is further case of the petitioners that subsequently, the complainant and her husband agreed to substitute the name of the wife of petitioner No. 2 as dealer and, in this regard, necessary 'No Objection' was granted by HPCL. It has been submitted that on 10.09.2025, the licence came to be finally transferred in the name of the wife of petitioner No. 2, namely, Ms. Rupali Gupta, vide memorandum of agreement executed between her and HPCL. A copy of the memorandum of agreement has been placed on record. According to the petitioners, the entire sale consideration as per the agreement to sell has been paid to respondent No. 2 and her husband, but they started asking for extra payment and, when the same was refused by the petitioners, they started interfering

with the operation of the retail outlet/petrol pump. It has been alleged that respondent No. 2 started demanding Rs. 1.50 crores more than what had been agreed between the parties.

8. It has been submitted that Ms. Rupali Gupta, in whose name the licence for retail sale of petroleum products had been transferred by HPCL, filed a civil suit before the learned Sub Judge (Special Mobile Magistrate Electricity), Jammu, and vide order dated 10.07.2026, the complainant was restrained from interfering with the business of operations of the Filling Station. According to the petitioners, even respondent No. 2/complainant filed a civil suit seeking permanent prohibitory injunction against petitioner Nos. 1 and 2, as well as Smt. Rupali Gupta and M/s HPCL, before the Court of the learned Sub Judge (City Judge), Jammu, and an interim order came to be passed in the said suit on 13.04.2026, whereby the parties were directed to maintain status quo with regard to the suit property. However, in violation of the said order, respondent No. 2 came on the spot when the petrol pump was being operating on 09.07.2026, with a view to stop the entire operation. It is being contended by the petitioners that when respondent No. 2/complainant failed to achieve her designs, she lodged the impugned FIR invoking the stringent provisions of the SC/ST Act against the petitioners.
9. It is being contended by the petitioners that the impugned FIR lodged by respondent No. 2 against the petitioners is nothing but an attempt on her part to wreak vengeance upon the petitioners with a view to forcing them to settle a purely civil dispute between the parties at her terms. It has

been further contended that all the allegations made in the FIR are false and frivolous. It has also been contended that the complainant is not a Scheduled Caste, though her husband is a member of a Scheduled Caste community, but he was not present at the spot, as such, even if it is assumed that the petitioners uttered any words with a view to insult or intimidate, still, the same has not happened within public view. Thus, the offences under the SC/ST Act are not made out against the petitioners. According to the petitioners, initiation of criminal proceedings, particularly under Section 3 of the SC/ST Act, against the petitioners is nothing but an abuse of the process of law.

- 10.** Both the petitions have been contested by respondent No. 2/complainant by filing her reply. In her reply, she has submitted that the offences committed by the petitioners are grave in nature and no leniency can be granted in their favour. It has been contended that the petitioners are criminal-minded persons and are likely to commit similar offences in future. According to the complainant, she had made complaints against petitioner No. 1 with the Police on 11.04.2026 and 02.06.2026 and, on the basis of the said complaints, the Executive Magistrate, 1st Class, Bahu, Jammu, has taken preventive measures against the petitioners. A similar complaint was made by her before the SSP, Jammu, on 10.04.2026, but when the petitioners did not desist from repeating their activities, the complainant was constrained to lodge the impugned FIR against them. It has been submitted that on 20.07.2026, when the complainant had attended the Court, petitioner Lokesh Gupta once again started hurling filthy abuses and made obscene gestures towards her.

- 11.** According to the complainant, the land in question belongs to her husband, who was granted the dealership of a petrol pump, which he was operating on the said land, regarding which he had entered into a memorandum of agreement with HPCL on 20.05.2006, which was extended from time to time. It has been submitted that the complainant and her husband, who were operating the retail dealership of the petrol pump smoothly until 2024, were approached by petitioners Davinder Singh and Amit Gupta, who, in connivance with Ravinder Gupta, who was working as Manager of the Filling Station, made a proposal for purchase of the said filling station for a total consideration of Rs. 7.00 crores. It has been alleged that when the petitioners failed to pay the amount of Rs. 7.00 crores, they offered another proposal that they would pay an amount of Rs. 2.5 crores to the complainant if she mortgaged the Filling Station in their names. The complainant is stated to have agreed to this proposal and filed an application for transferring the dealership. According to the complainant, petitioner Davinder Singh transferred an amount of Rs. 81,93,150/-, but the rest of the payment has not been made by the petitioners.
- 12.** It has been submitted that the complainant signed the agreement, but when she saw that the contents of the agreement were ambiguous, she refused to sign the other part of the agreement unless the agreement was properly drafted. It has been alleged that the petitioners tried to pressurize her and also forged her signatures and those of her husband on the said agreement, thereby wrongfully obtaining the dealership of HPCL in connivance with the officials of the said company. It has been

submitted that transfer of the dealership in the name of the said Rupali Gupta, wife of petitioner No. 2, is illegal, null and void.

- 13.** According to respondent No. 2/complainant, even if there are civil disputes going on between the parties, still, in the facts and circumstances of the present case, when the petitioners have openly scolded and used filthy abuses against her in public view, they are required to be prosecuted.
- 14.** Petitioner No. 1 has filed a supplementary affidavit, wherein he has denied the allegations of the complainant with regard to the acts alleged to have taken place when the complainant was returning after attending the Court at Janipur, Jammu.
- 15.** I have heard learned counsel for the parties and perused the record of case.
- 16.** The petitioners have been booked under Sections 79, 351(2), 352, 3(5) of the BNS, 2013, and Section 3 of the SC/ST Act. So far as the offence under Section 79 of the BNS is concerned, it pertains to insulting the modesty of a woman, and the said offence is punishable with imprisonment for a term of three years. Similarly, the offence under Section 351 of the BNS, which relates to criminal intimidation, is punishable with imprisonment for a term which may extend to two years. The offence under Section 352 of the BNS is also punishable with imprisonment, which may extend to two years. Thus, the offences alleged to have been committed by the petitioners, which fall under the provisions of the BNS, are not grave in nature so as to entail rejection of prayer relating to grant of bail.

17. That takes us to Section 3 of the SC/ST Act, which is alleged to have been committed by the petitioners. The said offence is punishable with imprisonment for a term which may extend to five years and with fine. The offence being one against the society at large is grave in nature. Enlarging an accused on bail, who has committed such an offence at a time when the investigation of the case is still in progress, is definitely going to be against the public interest. However, the question that arises for determination is whether the offence under Section 3 of the SC/ST Act is *prima facie* made out against the petitioners from the allegations made in the impugned FIR. According to the petitioners, the said offence is not at all made out against them even from a bare reading of the contents of the impugned FIR. This is being seriously disputed by the respondents.
18. In order to take a *prima facie* view of the matter for the purpose of deciding the bail application, it is necessary to have a look at the contents of the impugned FIR. It is alleged in the FIR that on the fateful day, the accused abused the complainant by using caste-based language and referring to her and her husband as ‘Chamar’ and ‘Chamarin’. It is also alleged that petitioner Amit Gupta repeatedly shouted, “Latt mar kar nikalo charmarin ko”. These remarks, according to the complainant, were made in full public view.
19. Section 3(1)(r) & (s) of SC/ST Act provide that acts of intentionally insulting or intimidating with intent to humiliate a member of a Scheduled Caste or Scheduled Tribe in any place within public view, and also acts of abusing any member of a Scheduled Caste or Scheduled

Tribe by caste name in any place within public view, are punishable offences.

20. In the present case, it is to be noted that the complainant, though married to a member of a Scheduled Caste community, does not herself belong to a Scheduled Caste community. It is a settled law that caste is determined by birth, which cannot be changed by marriage with a person belonging to a Scheduled Caste community. (Refer: **Sunita Singh v. State of Uttar Pradesh and others, (2018) 2 SCC 493**). Therefore, even if it is assumed that the petitioners used filthy caste-based language against respondent No. 2/complainant, who is not a member of a Scheduled Caste community, offence under Section 3 of the SC/ST Act would not be constituted by such acts of the accused.
21. However, it has been alleged by the complainant in the impugned FIR that the petitioners also used filthy and caste-based language against her husband, who is a member of Scheduled Caste community. It is an admitted case of respondent/complainant that her husband was not present on spot at the relevant time, as he is a permanently disabled person. The question that arises for determination is whether hurling caste-based abuses against the member of a Scheduled Caste community behind his back, when he is not present in full public view, would attract the provisions of Section 3(1)(r) and (s) of the SC/ST Act.
22. The aforesaid issue came up for discussion before the Supreme Court in the case of **Asmathunnisa v. State of Andhra Pradesh, (2011) 11 SCC 259**. While interpreting the words “in any place but within public view”, the Supreme Court held that the public must view the person being

insulted, for which he must be present, and no offence on the allegations under the said section gets attracted if the person is not present.

- 23.** From the aforesaid position of law as laid down by the Supreme Court, prima facie, it appears that ingredients of offence under Section 3(1) of the SC/ST Act may not get attracted to the facts of the present case. Though it would be for the investigating agency to conduct an investigation into this aspect of the matter and come to a conclusion whether the offence under Section 3(1) of the SC/ST Act is actually made out against the petitioners yet, for the purpose of deciding the bail application, prima facie opinion can be formed that the provisions of Section 3(1) of the SC/ST Act are not attracted to the present case.
- 24.** Yet another aspect of the matter, which is required to be noticed, is that there are long-standing civil disputes going on between the petitioners and the complainant with regard to transactions relating to the land and petrol pump. The petitioners claim that they have paid the entire sale consideration to the complainant and purchased the land along with the petroleum dealership from the complainant and her husband, but the same is being disputed by the complainant. According to her, the petitioners have taken undue advantage of the state of health of her husband and forced her to enter into the transaction, whereafter they have not paid the whole of the sale consideration to her. The petitioners have already filed a civil suit against the complainant, which is pending before the Court, and an interim order has already been passed in the said suit. In fact, the complainant is also stated to have filed a civil suit in respect of the same dispute against some of the petitioners and HPCL.

25. Learned counsel for the complainant, during the course of arguments, made a statement that the said civil suit has not been filed by the complainant and, in fact, she has not signed the plaint and the vakalatnama. To ascertain this fact, the original record of the suit was summoned from the concerned Court. A perusal thereof reveals that even an interim order has been passed in the said suit against the petitioners therein. It defies logic that the petitioners would manage the filing of a suit against themselves by the complainant and obtain an interim injunction against themselves. The learned counsel appearing for the complainant has explained that the petitioners have done so with a view to convert the present case into a civil dispute. I am afraid the reasoning defies the logic, because the petitioners having already filed a civil suit against the complainant had no need to file yet another bogus suit against themselves to make it a case of civil dispute.
26. In any case, the aforesaid aspect needs to be verified by the Court of the learned Sub Judge (City Judge), Jammu, before whom the suit has been filed in the name of the complainant against some of the petitioners and HPCL. Whatever may be the actual position, it is clear that there is a serious civil dispute going on between the parties, and the possibility that the civil dispute may have prompted the complainant to file the impugned FIR against them cannot be ruled out.
27. In view of what has been discussed hereinabove, a case for grant of bail in favour of the petitioners is made out. Accordingly, the petitioners are admitted to bail on the following conditions:

- (a) They shall furnish bail bonds with one surety in the amount of Rs. 50,000/- each to the satisfaction of the Investigating Officer.
- (b) They shall not tamper with the prosecution witnesses and shall cooperate with the investigating agency.
- (c) They shall not leave the limits of the Union Territory of Jammu and Kashmir without the prior permission of the Investigating Officer.
- (d) That they shall not indulge in similar activities

28. It is further provided that investigation in the impugned FIR may go ahead, but the challan, if intended to be laid against the petitioners, shall not be filed before the competent Court without permission of the Court. It is also directed that respondent No. 2/complainant shall file an affidavit before this Court indicating therein as to whether she has filed the suit before the Court of the learned Sub Judge (City Judge), Jammu, and whether she has signed the pleadings and the vakalatnama in the said suit. The requisite affidavit shall be filed by the complainant before the next date of hearing.

29. Bail application stands **disposed of**.

30. List CRM(M) No. 801/2026 on 16.11.2026.

31. The original record of the learned Sub Judge (City Judge), Jammu, be returned after retaining photocopy thereof.

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(SANJAY DHAR)
JUDGE

Jammu:
08.10.2026
Karam Chand

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No