APHC010434082026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3521]**
(Special Original Jurisdiction)

TUESDAY, THE 25th DAY OF AUGUST 2026

PRESENT

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL PETITION NO: 7198/2026

Between:

1. D UDAYANAND ALIAS D UDAY, S/O R. DORASWAMY,AGED 37 YRS, R/O. D.NO. 16-98/1, SWAMY MAISTRI STREET,CHITTOOR DISTRICT.

...PETITIONER/ACCUSED

AND

1. THE STATE OF ANDHRA PRADESH, Rep by its Public Prosecutor,High Court of Andhra PradeshAt Amaravati

...RESPONDENT/COMPLAINANT

Counsel for the Petitioner/accused:

1. D PURNACHANDRA REDDY

Counsel for the Respondent/complainant:

1. PUBLIC PROSECUTOR

The Court made the following:

ORDER:

The Criminal Petition has been filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity 'the BNSS') seeking to grant pre-arrest bail to the Petitioner/Accused in Crime No.75 of 2026 of Chittoor I Town Urban Police Station, Chittoor District registered for the alleged offence punishable under Section 318(4) of the Bharatiya Nyaya Sanhita, 2023 (for brevity, 'the BNS').

2. Heard the learned Counsel for the Petitioner and the learned Assistant Public Prosecutor. Perused the record.

3. So far, the allegation against the Petitioner is that he has allegedly committed an offence punishable under Section 318(4) of 'the BNS'. The alleged offence is punishable with imprisonment for a term below seven (07) years. Therefore, there is no apprehension of arrest of the Petitioner. Accordingly, the Petitioner is entitled to the benefit under Section 35(3) of 'the BNSS'/41-A of 'the Cr.P.C.,' in view of the judgments of the Hon'ble Apex Court in **Arnesh Kumar v. State of Bihar**[1] and **Md.Asfak Alam v. the State of Jharkhand**[2].

4. Further, the Hon'ble Supreme Court, in **Satender Kumar Antil v. Central Bureau of Investigation**[3], wherein at paragraph No.33, it is held as under:

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[1](2014) 8 SCC 273
[2](2023) 8 SCC 632
[3] Special Leave Petition (Crl.) No.5191 of 2021, dated 15.01.2026

> *33. On the basis of the interpretation given by us, we conclude as follows:*
>
> *a. An arrest by a police officer is a mere statutory discretion which facilitates him to conduct proper investigation, in the form of collection of evidence and, therefore, shall not be termed as mandatory.*
> *b. Consequently, the police officer shall ask himself the question as to whether an arrest is a necessity or not, before undertaking the said exercise.*
> *c. For effecting an arrest, qua an offence punishable with imprisonment up to 7 years, the mandate of Section 35(1)(b)(i) of the BNSS, 2023 along with any one of the conditions mentioned in Section 35(1)(b)(ii) of the BNSS, 2023 must be in existence.*
> *d. A notice under Section 35(3) of the BNSS, 2023 to an accused or any individual concerned, qua offences punishable with imprisonment up to 7 years, is the rule.*
> *e. Even if the circumstances warranting an arrest of a person are available in terms of the conditions mentioned under Section 35(1)(b) of the BNSS, 2023, the arrest shall not be undertaken, unless it absolutely warranted.*
> *f. Power of arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023, pursuant to a notice issued under Section 35(3) of the BNSS, 2023 is not a matter of routine, but an exception, and the police officer is expected to be circumspect and slow in exercising the said power.*

5. Furthermore, in this regard, it is apposite to mention the Hon'ble Apex Court in **Arnesh Kumar** *supra*, wherein detailed guidelines were issued at Para Nos.11 and 12, for arresting a person, which are being reproduced herein below:-

> *11. Our endeavor in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorize detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:*
> *a).All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 Code of Criminal Procedure, 1973 (for brevity 'the Cr.P.C.');*
> *b) All police officers be provided with a check list containing specified sub- clauses under Section 41(1)(b)(ii);*
> *c) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while*

> *forwarding/producing the accused before the Magistrate for further detention;*
>
> *d) The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;*
>
> *e) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;*
>
> *f) Notice of appearance in terms of Section 41-A of Cr.P.C be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;*
>
> *g) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, he shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.*
>
> *h) Authorizing detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.*
>
> *12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.*

6. The similar view is also reiterated by the Hon'ble Apex Court in **Md.Asfak Alam** *supra*, which also reiterated the guidelines laid down in the case of **Arnesh Kumar**.

7. In the light of the law laid down in the case of **Satender Kumar Antil, *Arnesh Kumar*** and **Md. Asfak Alam** *supra,* the Investigating Officer is under legal obligation to proceed in accordance with law, but he shall follow the procedure prescribed under Sections 41 and 41(A) of ‘the Cr.P.C.,’ (now Sections 35 and 35(3) of ‘the B.N.S.S.,’ 2023). The Petitioner is obliged to render his fullest cooperation in the ongoing investigation.

8. In the result, the Criminal Petition is disposed of directing the Investigating Officer to comply with Section 35(3) of 'the BNSS'/41-A of 'the Cr.P.C.,' and to strictly follow the directions issued in the cases of **Satender Kumar Antil, Arnesh Kumar** and **MD. Asfak Alam** *supra.* If it is noticed in the course of investigation that the Petitioner has committed any offence which is punishable with imprisonment beyond seven years, the Investigating Officer is at liberty to proceed in accordance with law.

As a sequel, Miscellaneous petitions, if any pending, shall stand closed.

DR. Y. LAKSHMANA RAO, J

Date: 25.08.2026
PRA

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