

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35261 of 2014

Arising Out of PS.Case No. -61 Year- 2014 Thana -RANIGANJ District- ARRARIA

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Ravindra Mandal

.... Petitioner/s

Versus

1. State of Bihar
2. Rubi Devi

.... Opposite Party/s

=====

with

Criminal Miscellaneous No.35265 of 2014

Arising Out of PS.Case No. -61 Year- 2014 Thana -RANIGANJ District- ARRARIA

- =====
1. Rajeshwar Mandal
2. Bimla Devi

.... Petitioner/s

Versus

1. State of Bihar
2. Rubi Devi

.... Opposite Party/s

=====

Appearance :

(In Cr.Misc. No.35261 of 2014)

For the Petitioner/s : Mr. Chandra Mohan Jha

For the Opposite Party/s : Mr. C.Sen Pd.Singh(A.P.P.)

(In Cr.Misc. No.35265 of 2014)

For the Petitioner/s : Mr. Chandra Mohan Jha

For the Opposite Party/s : Mr. C.Sen Pd.Singh(A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

03 06-04-2015 Heard learned counsel for the petitioners as well as

learned Additional Public Prosecutor.

2. Cr. Misc. No.35261 of 2014 wherein Ravindra

Mandal is the petitioner whereas Cr. Misc. No. 35265 of 2014

wherein Rajeshwar Mandal and Bimla Devi are the petitioners

commonly originate out of Raniganj P. S. Case no.61 of 2014

and on account thereof, both have been heard together and are

being disposed of by a common order.

3. Rubi Devi gave her fard-beyan on 09.04.2014 disclosing therein that she was married with Ravindra Mandal in the year 2010 and is blessed with a son. It has also been incorporated that 2-4 months after the marriage, she began to be vexed at the hands of her mother in-law Bimla Devi, father in-law Rajeshwar Mandal, husband Ravindra Mandal for procuring Rs.1,00,000/-, one she-buffalo, one motorcycle, bed, chair etc. in lieu of dowry. So many times, Panchayati was convened, but never accepted in its true spirit. It has also been disclosed that on 07.04.2014, the accused persons attempted to do away with her life and during course thereof, the activities adopted by the accused persons were duly narrated whereupon, she raised alarm attracting the neighbours, who rescued.

4. During course of argument having raised on behalf of petitioners asking for grant of anticipatory bail, a stage has come when the principle laid down by the Hon'ble Apex Court in *Arnesh Kumar v. State of Bihar & another reported in 2014(3) P.L.J.R. 314 (SC)* came on fore. The learned counsel for the petitioners submitted that though there happens to be direction given by the Hon'ble Apex Court in the aforesaid judgment, but as the same is not being followed either by the learned lower Court as well as by the Investigating Officer in its



true spirit, therefore, grievances of the accused remained unruminated. It has also been submitted that virtually on account of apathy of the Police Department, the aforesaid direction remained on paper and till today, the higher police officials have not taken pain to have it implemented in its true spirit, so that the judgment in its true sense could be adopted and applied to give a reasonable direction to the investigating officer to proceed accordingly, protecting fundamental right of an accused of the case having punishment up to seven years, more particularly Section 498A of the I.P.C. along with other ancillary offences unless and until, his arrest is eminently required in the interest of justice.

5. It has further been submitted that in the aforesaid decision, the Hon'ble Apex Court had not barricaded the scope of Section 438 of the Cr.P.C. Furthermore, it has also been submitted that in that case also petitioner, firstly was granted anticipatory bail, provisionally which, during course of pronouncement of the order has been confirmed. That being so, the prayer of the petitioners are maintainable. So, submitted that these petitions should be allowed on its merit.

6. It has also been submitted that so far merits of the case is concerned, petitioners Rajeshwar Mandal as well as Bimla Devi happen to be the father in-law and mother in-law

respectively and they have fallen victim of false implication which, now-a-days has become a fashion whenever there happens to be prosecution under Section 498A of the I.P.C.

7. In likewise manner, it has also been submitted that petitioner Ravindra Mandal, though happens to be husband, but has become victim of circumstance in the background of the fact that the illegal activities of informant has been protested at his end and that happens to be reason behind implication of the petitioner.

8. On the other hand, the learned Additional Public Prosecutor opposed the prayer and submitted that none of the petitioners deserve anticipatory bail, because of the fact that apart from specific allegation attributed against each of the petitioners wherefrom it is apparent that in dare devil manner, they have maltreated the informant as well as bent upon to do away with her life whereunder they have played their role as detailed in the fard-beyan itself, entertainment of anticipatory bail is permissible in exceptional cases as held by the ***Constitution Bench of the Hon'ble Apex Court in Sibbia Case reported in (1980) 2 SCC 565.***

9. Before coming to deal with the directions laid down by the ***Hon'ble Apex Court in Arnesh Kumar v. State of Bihar and another reported in 2014 (3) P.L.J.R. 314 (SC), I***

would like to refer Para-112 of *Siddharam Satlingappa Mhetre versus State of Maharashtra and others reported in (2011) 1 SCC 694* wherein ambit and scope of Section 438 has been laid down taking into account the law laid down by the *Constitution Bench in Shri Gurbaksh Singh Sibbia and others v. State of Punjab and Sarbajit Singh and another versus State of Punjab reported in (1980)2 SCC 565:-*

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- (ii) The antecedents of the applicant including the fact as to whether the accused 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;*
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;*
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*

(vi) *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*

(vii) *The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;*

(viii) *While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*

(ix) *The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*

(x) *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in*



the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

10. After going through the parameters so prescribed as detailed above, it is evident that consideration of prayer under Section 438 Cr.P.C. should be dealt with in appropriate way as it happens to be extraordinary power, and therefore, its enforcement should be with great care & caution. Section 438 Cr.P.C. could be rung by an accused having apprehension of arrest in regard to the commission of a non-bailable offence to relieve him from the accusation purposely levelled with an object of injuring or humiliating and that has to be surfaced at the end of applicant. Justification for application of the Section is to be taken into consideration from the facts of the case, the allegation so levelled against the accused, the ground pleaded on behalf of accused, the other surrounding circumstances and then, the Court should endeavour whether the prayer made on behalf of accused under Section 438 Cr.P.C. is entertainable or not.

11. In light of amendment having introduced under Section 41 Cr.P.C., the offences falling under cognizable, non-

bailable category have to be bifurcated in two parts. The first one, where the sentence, so prescribed crosses the limit of more than seven years and the second one, where sentence is upto seven years. So far, first part is concerned, it goes out of barricading and that being so, it needs no minute discussion. So far, second part is concerned, the section itself speaks regarding presence of clothes, and those clothes have to be properly convoked by the Investigating Officer, while proceeding with the investigation. Section 498A I.P.C., as it stands fell under second category. Furthermore, at one side the brides are being treated as milching cow and for that they are coerced, vexed, mauled and are fallen victim of maudlin conduct of her "*Sasuralwala*", in likewise manner while family of *Sasuralwala* even having no concern remotely, are being implicated in revengeful manner, and so, now-a-days the Courts are frequently confronted with malted social fabric attracting active indulgence as a lamppost. Because of the nature of litigation which appears to be fragile in nature in case is not properly handle, ruining not only lives of spouse, rather two family and its surroundings as well as dealing the cases, in same way, like case of harden criminal by the police, found disastrous, lastly came up before the Hon'ble Apex Court for proper adjudication. In likewise manner, on account of erosive way of dealing by the I.O.



Keeping aside the precaution prescribed under Section 41 of the Cr.P.C. as well as exercising the power of remand by the lower Court in mechanical manner, flooded the docket, which has been duly identified in ***Arnesh Kumar v. State of Bihar and another reported in 2014 (3) P.L.J.R. Page-314***, which deals with not only Section 498A I.P.C., rather all kinds of offences whereunder sentence is prescribed upto seven years and after dealing with Section 41 as well as 167 Cr.P.C. conjointly, and then in Para-12, it has been observed:-

“we are of the opinion that if the provisions of Section 41, Cr.P.C. which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the Police Officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.P.C. for effecting arrest be discouraged and discontinued”.

12. The Hon’ble Apex Court, by such observation has enlighten not only the police mechnary rather learned lower

Court also, and further, emphasized that its proper application will certainly remove the fear of hanging sword over neck of an accused, and being so, there would not be cry for grant of anticipatory bail.

13. The Hon'ble Apex Court was very much conscious with regard to its power as per Article 141 of the Constitution whereunder law laid down by the Hon'ble Apex Court is to be obeyed in terms thereof, by all concern and thereupon, the Hon'ble Apex Court had laid down following direction in ***Arnesh Kumar (Supra) under Para-13:-***

13. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(1) 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, Cr.PC;

(2) All police officers be provided with a check

list containing specified sub-clauses under Section 41(1)(b)(ii);

(3) 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;

(4) The Magistrate while authorising 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 authorise detention;

(5) 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;

(6) Notice of appearance in terms of Section 41A of Cr.PC 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;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

14. Now, coming to the present case, it is apparent that all the petitioners happens to be an accused in a case registered under Section 498A of the I.P.C. along with other allied Sections of Dowry Prohibition Act. Mere arrayed as an accused in non-bailable offence that too, wherein punishment is extended up to seven years did not justify the prayer of the petitioner asking for anticipatory bail, unless and until, there happens to be fulfilment of parameters as fixed, more particularly no1 by the Apex Court in Arnes Kumar Case (Supra) on account thereof, the Investigating Officer, while dealing with the investigation of the offences extending punishment up to seven years, must adhere to the direction with

promptness as well as cautiously so that there should not be violation of their end.

15. As in the present case, there happens to be complete absence of reliable material at least justifying clause (I) of the direction as laid down by the Apex Court, hence there is no apparent justifiable ground to entertain prayer of petitioner for anticipatory bail.

16. With the aforesaid observations, these two petitions are disposed of.

17. Let a copy of this order be also served upon the Superintendent of Police, Araria to direct the Investigating Officer to proceed in terms thereof. Side by side the learned lower Court is also directed to be cautious in getting the direction laid down by the Hon’ble Apex Court complied with in its true spirit at their end.

(Aditya Kumar Trivedi, J)

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