

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5591 of 2015

Arising Out of PS.Case No. -388 Year- 2013 Thana -AURANGABAD COMPLAINT CASE
District- AURANGABAD

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1. Md. Usman S/o Abdul Hafiz Resident of Village Pachar, P.S. Rafiganj,
District Aurangabad at present C/o Jawed Mistri, Resident of Bara
Bazar, P.S. Chaibasa, District Chaibasa, Singhbhum, Jharkhand.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sudha Chandra, Advocate.

For the Opposite Party/s : Mr. Ram Chandra Singh (App)

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
ORAL ORDER

5 16-07-2015

This is an application, made under Section 438 of the Code of Criminal Procedure, seeking pre-arrest bail by the petitioner, namely, Md. Usman, in connection with *Complaint Case* No.388 of 2013 under Sections 406, 423, 120B of the Indian Penal Code.

Perused the above application and materials on record including a copy of the order, dated 06.01.2015, passed, in A.B.P. No. 1221 of 2014, by the learned Sessions Judge, Aurangabad, dismissing the said application for pre-arrest bail.

Heard Mr. Sudha Chandra, learned Counsel for the petitioner, and Mr. Ram Chandra Singh, learned Additional Public Prosecutor, appearing on behalf of the State.



Because of the fact that Section 438 of the Code of Criminal Procedure applies to a situation, wherein a person, apprehending arrest in connection with non-bailable offence, may seek bail, it logically follows that when an accused is *summoned* to appear in a *complaint case* involving commission of a non-bailable offence, he cannot contend, in the face of the provisions of Section 438 of the Code of Criminal Procedure, that he is likely to be arrested in connection with non-bailable offence inasmuch as the obligation of such an accused person is to appear in the *complaint case* pursuant to the *summon* issued to him and he may, on such appearance, apply for bail.

Necessarily, therefore, a person, who is *summoned* to appear in a *complaint case* involving non-bailable offence, cannot claim to be apprehending arrest and cannot, therefore, seek that he be granted pre-arrest bail before he appears in the *complaint case*, though merely *summon* has been issued to him. Obviously, in such a case, his application for pre-arrest bail will not be sustainable.

The fact of the matter, however, remains, as agreed at the Bar, that an accused, such as, the present petitioners, would be sent to jail, as a matter of practice, when the offences alleged — in the *complaint case* — is a non-bailable offences even if the accused appears, in the

complaint case, pursuant to a *summon*.

It needs to be, therefore, clarified that ordinarily and unless it is otherwise warranted in the given set of facts and circumstances of a case and the law relevant thereto, an accused shall not be remanded to custody merely because the case involves commission of non-bailable offences if the accused appears, in a *complaint case*, pursuant to issuance of *summon*.

Coupled with the above, I may also pause here to point out that in a *complaint case*, when cognizance has been taken, no investigation is, ordinarily, required and it is the complainant, who has to prove his or her case on the basis of the evidence, which he or she may adduce by examining witnesses and such witnesses may be cross-examined by the defence.

No fruitful purpose would, thus, be served by detaining an accused in a *complaint case*, even if the case involves commission of non-bailable offences, unless there is credible material on record to show that accused may unduly influence the witnesses and/or desist them from giving evidence or may not be available for trial.

Unless such an extreme case is made out, as stand indicated above, a Magistrate shall, ordinarily, allow the accused to go on bail unless the offence falls within the

exceptions as have been provided under Section 437 of the Code of Criminal Procedure itself, such as, a case of murder, where the case requires an order of commitment to the Court of Session.

Reverting to the case at hand, it may be pointed out that the petitioner, apprehending that he would be taken into custody and detained if he appeared in obedience to the *summon* issued to him, has made this application seeking pre-arrest bail.

Upon taking cognizance of non-bailable offence, a Magistrate does not lose the jurisdiction to grant bail to such an accused provided that the offence does not fall within those categories, where Sections 437 of the Code of Criminal Procedure prohibits granting of regular bail by a Magistrate or the peculiarity of the facts of the case does not legally permit granting of bail or when the case is required to be committed to the Court of Session.

Considering, therefore, the matter in its entirety and in the interest of justice, while prayer for anticipatory bail is declined, it is hereby directed that the petitioner above-named shall appear in the learned Court below and if, on his appearance in the learned Court below, he applies for bail, learned Court below shall do the needful in accordance with law.

This application for pre-arrest bail shall stand disposed of in terms of the above observations and directions.

(I. A. Ansari, J.)

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