

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43455 of 2016

Arising Out of PS.Case No. -929 Year- 2014 Thana -JEHANABAD COMPLAINT CASE District-
 JEHANABAD

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1. Muni Khatoon wife of Md. Arab Hussain Ansari resident of Village-
 Musepur, Police Station- Mahandia in the district of Arwal.

.... Petitioner/s

Versus

1. The State of Bihar.
 2. Dinesh Kumar Singh son of Late Siya Ram Singh resident of Village-
 Kaler, Police Station- Kaler in the district of Arwal.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Narayan Sharma

For the Opposite Party/s Mr. Satyendra Prasad

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

04/ 25.01.2017

1. Record has been listed for orders. I have heard both parties.

2. Petitioner apprehends her arrest in connection with Complaint case no. 929/14/ Trial no. 1910/2015 in which vide order dated 4.4.2015 learned Sub divisional Judicial Magistrate, Arwal, having found prima facie case, for the offences punishable under sections 406 and 420 of the Indian Penal Code, ordered to issue summon against the petitioner. Subsequently, vide order dated 16.7.2015 ordered to issue bailable warrant against her.

3. The accusation against the petitioner is that she took Rs 05/- lakhs from the complainant but when the complainant demanded his money back, the petitioner refused to return the aforesaid amount to him.

4. On 29.11.2016 when this matter was placed before this bench for hearing, a question was raised on behalf of the



prosecution that the present petition is not maintainable because a coordinate bench of this court in the case of Salim Ansari @ Md. Salim Ansari and ors versus State of Bihar and another reported in 2015 (3) PLJR 806 has held that if a person is summoned to appear in complaint case involved non-bailable offence, he can not claim to be apprehended arrest and when there is no apprehension of arrest, anticipatory bail petition filed under section 438 of the Cr.P.C is not maintainable.

5. Learned counsel appearing for the petitioner submitted that in the present case, learned court below vide order dated 4.4.2015, having found prima facie case for the offences punishable under sections 406 and 420 of the Indian Penal Code, ordered to issue summon against the petitioner but without getting any service report, issued bailable warrant of arrest against the petitioner on 22.7.2015 and, therefore, issuance of bailable warrant goes to show that the petitioner does have apprehension of her arrest and it can not be said that she does not have any apprehension of arrest. It was further submitted by him that in several decisions, it has been held by Apex Court of this country as well as this Hon'ble court that, if the court, having found prima facie case of non-bailable offence in complaint case, issues summon to the accused, then also, accused does have apprehension of arrest. It was further submitted by him that section 438 of the Cr.P.C does not contain any restriction on entertainment of an application for anticipatory bail.

6. Learned counsel appearing for the petitioner cited



several decisions in support of his contentions which are as follows:-

(a) Bharat Chaudhary and another vs. State of Bihar and another reported in 2003 (4) PLJR SC 217;

(b) Md. Alam @ Abdul Allam and ors vs. State of Bihar reported in 1998 (1) PLJR page 94;

(c) Bajranglal Agrawal and others vs. State of Bihar reported in 1989 PLJR page 767 and

(d) S. K. Alim @ Md. Alim and others vs. State of Bihar reported in 1997 Volume 2 BLJ page 745.

7. In Bharat Chaudhary and another (supra), it has been held by Apex Court of this country that High Court and the Supreme Court have necessary power vested in them to grant anticipatory bail in non-bailable offence under section 438 of the Cr.P.C when cognizance is taken or charge sheet is filed provided the facts of the case require the court to do so.

8. In S. K. Alim @ Md. Alim and others (supra), it has been held by a coordinate bench of this court that the jurisdiction to grant anticipatory bail under section 438 of the Cr.P.C does not cease with the issuance of bailable or not bailable warrant against the accused and if the jurisdiction of the court to entertain such an application on the ground of issuance of process is ousted, the provisions of anticipatory bail will be rendered nugatory in respect of the accused in cases instituted on a criminal complaint as an accused person can not be deemed to be aware of the filing of the criminal complaint against him unless and until a process is issued against him.

9. Similar view has been expressed by a coordinate



bench of this court in Bajranglal Agrawal and others (Supra) and held that application under section 438 of the Cr.P.C can be entertained and allowed even after cognizance is taken in the case.

10. In Md. Alam @ Abdul Allam and ors (supra), it has been held by a coordinate bench of this court that there is nothing in section 438 (1) of the Cr. P.C by which it can be presumed that an application for an anticipatory bail will not lie if a Magistrate has taken cognizance of non-bailable offence.

11. The aforesaid decisions go to show that petition under section 438 of the Cr.P.C can be entertained not only pre-cognizance stage but after cognizance stage also and, therefore, petition under section 438 of the Cr.P.C can be entertained even after issuance of summons in a complaint case, if offences are non-bailable in nature.

12. In the present case, admittedly, learned court below has found prima facie case for non-bailable offences and ordered to issue summon against the petitioner for non-bailable offences. The court has ample power to take accused under custody and remand him to judicial custody. Mere issuance of summon to accused in a complaint case does not restrict the power of the court to remand an accused in judicial custody in non-bailable offences and so, it is obvious that even if in a complaint case, the court has issued summons to an accused for non-bailable offences, it can not be said that accused does not have any apprehension of arrest because as I have already stated that mere issuance of summon does not deprive the court to remand the accused into judicial custody, if the offence



is non-bailable.

13. Moreover, issuance of summons, bailable warrant and non-bailable warrant etc is only a means to procure the attendance of the accused of that case and, therefore, it can not be said that issuance of summons to an accused for non-bailable offences in a complaint case gives security to that accused that he shall not be remanded in judicial custody because if an accused appears before the court even after issuance of summons in non-bailable offences, the court may remand him in judicial custody taking the note of gravity and nature of offence, if the court thinks to do so.

14. In the aforesaid circumstances, I have no hesitation to say that even summon is only issued in complaint case and if the offence is non-bailable, then also, there would be genuine apprehension of arrest in the mind of accused. Moreover, it has been held in several decisions that petition under section 438 of the Cr.P.C can be entertained even after taking cognizance or before issuance of any process. So, in the aforesaid circumstance, in my view, that even if only summons has been issued for non-bailable offences in complaint case, then also, accused does have apprehension of his arrest.

15. So far as case of Salim Ansari @ Md. Salim Ansari and ors versus State of Bihar and another reported in 2015 (3) PLJR 806 is concerned, a coordinate bench of this court has issued only certain guidelines to subordinate courts of this State so that the subordinate courts could deal with regular bail petition more



properly and judiciously. In the aforesaid decision, the court has, nowhere, stated that petition under section 438 of the Cr.P.C is not maintainable in complaint cases, if only summons is issued in non-bailable offences to the accused.

16. So far as merit of the present case is concerned, the complaint petition reflects that the petitioner had taken loan from the complainant but failed to return the amount to the complainant and, therefore, the dispute appears to be of civil nature.

17. On the basis of the aforesaid discussions, in my view this petition is maintainable and the petitioner is entitled to get the privilege of anticipatory bail. Accordingly, this anticipatory bail is allowed and it is ordered that, in the event of arrest/ surrender within six weeks from the date of receipt of this order to the concerned court, let the petitioner be released on bail on furnishing bail bonds of Rs 10,000/- with two sureties of the like amount each to the satisfaction of the Sub divisional Judicial Magistrate, Arwal in Complaint Case no. 929 of 2014/ Trial no. 1910 of 2015 subject to condition as laid down under section 438(2) of the Cr.P.C.

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(Hemant Kumar Srivastava,J)

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