

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Criminal Case (A) No.626 of 2017**

- Smt. Nirmala Prasad W/o Shri Madhusudan Prasad, Aged About 63 Years R/o A-284, Vikaspuri, Thana Vikaspuri, New Delhi

---- Applicant

**Versus**

- State Of Chhattisgarh Through The Station House Officer, Mahila Thana Bilaspur, District Bilaspur, Chhattisgarh

---- Respondent

**AND****MCRCA No. 663 of 2017**

- Kumar Dhruw S/o Shri Madhusudan Prasad, Aged About 31 Years R/o A-284, Vikaspuri, Thana Vikaspuri, New Delhi, Presently Residing At 3304, Golden Sands Towers, Alnahada, Sharjha, U A E

---- Applicant

**Versus**

- State Of Chhattisgarh Through Its Station House Officer, Mahila Thana Bilaspur, District Bilaspur, Chhattisgarh

---- Respondent

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| For Applicants       | : Shri Amrito Das, Advocate      |
| For Respondent/State | : Shri Wasim Miyan, Panel Lawyer |

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**Hon'ble Shri Justice Chandra Bhushan Bajpai****Order On Board****24.8.2017**

Both the above mentioned bail applications arise out of same incident and crime number, hence, both the applications are being heard and disposed of by a common order.

2. These applications under Section 438 of Code of Criminal Procedure, 1973 (for short 'the Code') have been filed by the applicants apprehending their arrest in connection with Crime

No.07/2016 registered at Police Station Mahila Thana Bilaspur, Distt. Bilaspur (CG) for offence punishable under Section 498(A), 34 of the Indian Penal Code.

3. Learned counsel for the applicants submits that charge sheet is not yet filed, co-accused Madhusudhan Prasad, i.e. father of applicant Kumar Dhruw and husband of applicant Nirmala Prasad, has already been granted bail by 5th Additional Sessions Judge, Bilaspur in Bail Petition No.630/2017 under Section 439 of CrPC. Case of the present applicants is similar for the purpose of appreciation of facts under Section 498-A of the IPC. Learned counsel for the applicants further submits that concerned authorities have not complied with the guidelines given by the Hon'ble the Apex Court in the matter of **Arnesh Kumar Vs. State of Bihar, 2014 (8) SCC 273** and also not complied with the directions given by the Hon'ble Apex Court in the matter of **Rajesh Sharma & Ors. vs. State of UP & Anr.** passed in Criminal Appeal No.1265/2017 arising out of Special Leave Petition (Criminal) No.2013/17 vide judgment dated 27.7.2017 which is operative and binding. Hence the applicants may be given protection till compliance of the direction given by the Hon'ble Apex Court. Reliance is placed in para 19 of Rajesh Sharma (supra) which is reproduced below:-

“19. Thus, after careful consideration of the whole issue, we consider it fit to give following directions:-

“(i) (a) In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be

reviewed from time to time and at least once in a year by the District and sessions Judge of the district who is also the Chairman of the District Legal Services Authority.

(b) The Committees may be constituted out of para legal volunteers/social workers/retired persons/wives of working officers/ other citizens who may be found suitable and willing.

(c) The Committee members will not be called as witnesses.

(d) Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.

(e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.

(f) The committee may give its brief report about the factual aspects and its opinion in the matter.

(g) Till report of the committee is received, no arrest should normally be effected.

(h) The report may be then considered by the Investigating Officer or the Magistrate on its own merit.

(i) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.

(j) The members of the committee may be given such honorarium as may be considered viable.

(k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.

(ii) Complaints under Section 498-A and other connected offences may be investigated only by a designated Investigating Officer of the area. Such designations may be made within one month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today.

iii) In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior judicial officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord;

iv) If a bail application is filed with at least one clear day's notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife / minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest/custody and interest of justice must be carefully weighed;

- v) In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine;
- vi) It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted; and
- vii) Personal appearance of all family members and particularly outstation members may not be required and the trial Court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial.
- viii) These directions will not apply to the offences involving tangible physical injuries or death."

4. In reply, learned counsel for the State would submit that there is no material surfaced in the copy of the case diary regarding compliance of the directions given by the concerned authority.

5. On due consideration, both the MCRC(A)s are disposed of. The concerned authorities are directed not to arrest the applicants unless and until the directions given by the Hon'ble Apex Court in para 19 mentioned above are complied with along with entire provisions of law.

Certified copy as per rules.

**Sd/-**  
**(Chandra Bhushan Bajpai)**  
**JUDGE**