

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
(CIRCUIT BENCH AT JALPAIGURI)**

Present:

The Hon'ble Justice Subrata Talukdar

and

The Hon'ble Justice Krishna Rao

CRM (A) 432 of 2022

In Re: An application for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Bagdogra P.S. Case No. 365 of 2022, under Section 498A/323/34 IPC corresponding to G.R. Case No. 3414 of 2022 pending before the Ld. Court of ACJM, Siliguri.

And

In the matter of: **Barun Kumar Das** ...Petitioner

-Vs. -

The State of West Bengal

For the Petitioner : Mr. Ankur Barman
Mr. Pratap Roy

For the State : Mr. Kallol Acharjee
Mr. Tapan Bhattacharjee

Heard on : 05.09.2022 & 07.09.2022

Judgment on : 09.09.2022

Krishna Rao, J.:

This is an application for grant of anticipatory bail in connection with Bagdogra P.S. Case No. 365 of 2022, under Section 498A/323/34 IPC corresponding to G.R. Case No. 3414 of 2022.

The police of P.S. Bagdogra registered the instant case on the complaint of the wife of the petitioner on the allegation that the petitioner had committed physical and mental torture upon his wife and used to beat his wife often after consuming liquor. It is also alleged that on 27.07.2022, the petitioner had assaulted his wife on road when she went to purchase medicine. Counsel for the petitioner submits that the marriage was solemnized in the year 2003 and the petitioner is having one son aged about 16 years and the wife of the petitioner is residing with her parents for the last many years.

Learned Counsel representing the petitioner submits that only to implicate the petitioner in a false case, the wife of the petitioner had made a false complaint against the petitioner. He further submits that though the police had registered the case against the petitioner but no notice under Section 41A of the Code of Criminal Procedure was served upon the petitioner.

Learned Counsel for the petitioner submits that immediately after registration of the case, the police is in search of the petitioner to arrest the petitioner without following the due process of law.

Learned Counsel for the petitioner further submits that as the case initiated against the petitioner is non-bailable in nature and is apprehending

arrest. The petitioner submits that the petitioner will cooperate with the investigation.

Learned Counsel for the State submits that since after registration of the case, the petitioner is absconding and is not co-operating with investigation. Counsel for the State submits that there are serious allegations against the petitioner and his custodial interrogation is required.

Learned Counsel for the State submits that if the anticipatory bail is granted to the petitioner, the investigation will be badly hampered.

Heard, the Learned Counsel for the respective parties perused the Case Diary and the materials available on record. The allegation against the petitioner is that the petitioner is used to torture his wife physically and mentally and also used to assault after consuming liquor.

During investigation, the I.O has recorded the statement of three witnesses and as per the statement, the allegation that on the alleged date of incident, the petitioner had assaulted his wife when she went to purchase medicine from market. The petitioner had moved an application for anticipatory bail before the Learned Sessions Judge, Darjeeling but the same was rejected on 22.08.2022.

From the C.D, it reveals that during the investigation, the I.O has examined only three witnesses. The I.O has not made any endeavor to sent notice to the petitioner under Section 41A of the Cr.P.C.

In the case reported in (2014) 8 SCC 273 (Arnesh Kumar -vs- State of Bihar & Anr.), the Hon'ble Supreme Court held that :-

“10. We are of the opinion that if the provisions of [Section 41 CrPC](#) 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 emphasis that the practice of mechanically reproducing in the case diary all or most of the reasons contained in [Section 41 CrPC](#) for effecting arrest be discouraged and discontinued.

11. 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 directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under [Section 498-A IPC](#) is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from [Section 41 CrPC](#);

11.2. All police officers be provided with a check list containing specified sub- clauses under [Section 41\(1\)\(b\)\(ii\)](#);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. 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;

11.5. 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;

11.6. Notice of appearance in terms of [Section 41-A](#) of CrPC 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;

11.7. *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 the High Court having territorial jurisdiction.*

11.8. *Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.”*

Admittedly, instant case is registered under Section 498A IPC but no notice under Section 41A served upon the petitioner. After perusing the Case Diary, it reveals that the I.O in casual manner investigated the case or otherwise it can be said that the I.O has not made any investigation except recording statement of only three witnesses under section 161 and obtained injury report since after registration of case till date.

In the case reported in AIR 2022SC 3386 (Satender Kumar Antil – versus- Central Bureau of Investigation and Ors):

“73. *In conclusion, we would like to issue certain directions. These directions are meant for the investigation agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to state amendments:*

a....

b....

c. The courts will have to satisfy themselves on the compliance of section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail.

d.....

e.....

f.....

g.....

h.....

i.....

j.....

k.....

l.....”

Though it is not proper for this Court to disclose about the Case Diary in this order and thus the Commissioner of Police, Siliguri is directed to go through the Case Diary of the instant case immediately and to issue a show-cause to the Investigating Officer seeking a satisfactory response, failing which appropriate proceedings may be drawn up.

In view of the above, we grant anticipatory bail to the petitioner in the event of arrest, the petitioner may be released on bail of Rs. 5,000/-with one surety subject to the satisfaction of the Ld. Court of ACJM, Siliguri. The petitioner shall comply with the conditions of section 438(2) of the Code of Criminal Procedure with the further conditions to meet the I.O. once in week until further order and shall not hamper or tamper with the evidence.

As it is found that the investigating agencies are not following the directions passed by the Hon’ble Supreme Court in the case of Arnesh Kumar (Supra), this order may be forwarded to the Commissioner of Police, Siliguri and Inspector General of Police, North Bengal to circulate the same to all the concerned police station for compliance of the order passed by the

Hon'ble Supreme Court during investigation. Original Case Diary is return to the Counsel appearing for the State.

CRM (A) 432 of 2022 is thus **disposed of**.

Registry of this Court is directed to forward the copy of this Judgment to the Commissioner of Police, Siliguri and Inspector General of Police, North Bengal to circulate the same to all concerned Police Station. Copy of this Judgment may also be forwarded to the Ld. Additional Public Prosecutor for circulating the same to all Learned Advocate Prosecutors representing the State for their information.

All concerned parties shall act in terms of the copy of the Judgment downloaded from the official website of this Court.

Urgent photostat certified copy of this Judgment, if applied for, be supplied to the parties on compliance of necessary formalities.

I agree.

(Subrata Talukdar, J.)

(Krishna Rao, J.)