

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.6198 of 2022

1. Lipika Behera

2. Sasmita Behera

....

Petitioners

Mr. J. Sahoo, Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. Arupananda Das,

Addl. Government Advocate

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
28.06.2022**

Order No.

01. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard learned counsel for the petitioners and learned counsel for the State.

This is an application under section 438 Cr.P.C. for grant of anticipatory bail to the petitioners in connection with G.R. Case No.1080 of 2020 arising out of Rambha P.S. Case No.417 of 2020 pending in the Court of learned J.M.F.C., Khallikote for alleged commission of offences under sections 341/323/294/506 of the Indian Penal Code.

Perused the F.I.R.

Learned counsel for the petitioner submitted that the first information report was registered under

sections 341/323/294/506 of the Indian Penal Code and ultimately charge sheet has also been submitted under such offences and during the course of investigation, the notices as contemplated under section 41A of Cr.P.C. have been served on the petitioners, who are ladies and they have complied with the terms and conditions of the notices but after submission of charge sheet, the learned Magistrate took cognizance of offence under section 307 of the Indian Penal Code apart from the offences under which charge sheet has been submitted. It is further submitted that in spite of the fact that the petitioners have been served with the notices under section 41A of Cr.P.C., there is every chance that the petitioners would be taken into custody because of taking cognizance of the offence under section 307 of the Indian Penal Code.

In the case of **Pradeep Ram -Vrs.- State of Jharkhand reported in (2019) 17 Supreme Court Cases 326**, the Hon'ble Supreme Court held as follows:

"31. In view of the foregoing discussions, we arrive at the following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:

31.1. The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

31.2. The investigating agency can seek order from the Court under section 437(5) or 439(2) Cr.P.C. for arrest of the accused and his custody.

31.3. The Court, in exercise of power under section 437(5) or 439(2) Cr.P.C., can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under section 437(5) as well as section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-bailable offences which may not be necessary always with order of cancelling of earlier bail.

31.4. In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on

such addition of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail.”

In view of the observation made by the Hon’ble Supreme Court, the apprehension of the petitioner is totally misconceived and if the petitioners appear in future in pursuance of any summons issued to them, the fact that they have been served with notices under section 41A of Cr.P.C. and they are ladies, shall be taken into account while adjudicating the bail application of the petitioners.

Accordingly, the ABLAPL is disposed of.

Urgent certified copy of this order be granted on proper application.

