

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION NO.7193 OF 2022****ORDER:**

This Criminal Petition is filed under Sections 437 and 439 of Code of Criminal Procedure, 1973 (for short “Cr.P.C”) seeking regular bail to the petitioner/ Accused in Crime No.241 of 2022 on the file of Nizamabad IV Town Police Station, Nizamabad District, registered for the offences punishable under Sections 406, 420 of Indian Penal Code and Sections 25 of the Indian Telegraphic Act, 1885 and Sections 3 & 6 of the Indian wireless Telegraphy Act, 1933.

2. Heard learned counsel for the petitioner and learned Assistant Public Prosecutor for the respondent-State and perused the record.

3. As seen from the remand report, though the offences are punishable less than seven years, the procedure prescribed under Section 41-A of Cr.P.C. was not followed by the respondent-Police. The Honourable Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation**¹ held that if the police failed to follow procedure under Section 41-A of Cr.P.C., the accused are entitled to be released on bail. The relevant paragraph (para-73) of the said Judgment reads as follows;

“73.In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and

¹ 2022 SCC Online SC 825

also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments.:

a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

b) The investigating agencies and their officers are duty-bound to comply with the mandate of [Section 41](#) and [41A](#) of the Code and the directions issued by this Court in *Arnesh Kumar* (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

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) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed under [Section 41](#) and [41A](#) of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of [Section 41A](#) of the Code.”

4. At this juncture learned Assistant Public Prosecutor submits that it is mentioned in the remand CD that the accused refused to take notice under Section 41-A of Cr.P.C. and complied.

5. As seen from the Remand Report, the raid was conducted on 22.07.2022 and the petitioner was also remanded on the very same day. The question of refusal to take notice and compliance, in such circumstances appears to be made up by the police and no such notice was issued. In *Arnesh Kumar v. State of Bihar*² the Honourable

² (2014) 8 SCC 273

Supreme Court held that proper procedure under Section 41-A of Cr.P.C. has to be followed and due opportunity has to be given to explain the case against him. When the raid and arrest have taken place on the same day there is a clear violation of the directions issued by the Honourable Supreme Court in ***Arnesh Kumar case (cited supra)***

6. Learned Assistant Public Prosecutor submits that there is another case pending against this petitioner for which reason he was arrested.

7. The said claim of the learned Assistant Public Prosecutor also cannot be maintained for the reason of violation of procedure prescribed under Section 41-A of Cr.P.C.

8. Assuming that the accused had refused notice issued under Section 41-A of Cr.P.C., it is for the respondent-police to paste notice outside his residence or the office which are known to the police.

9. In view of the aforesaid facts and circumstances, this Criminal Petition is allowed and the petitioner can be granted regular bail subject to the following conditions:

- i) The petitioner/accused shall execute personal bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties for a like sum each to the satisfaction of I Additional Judicial first class Magistrate, Nizamabad.
- ii) The petitioner/accused, after release shall appear before the concerned Station House Officer, every Monday between 10.00

A.M. to 1.00 P.M. for a period of eight weeks, for the purpose of investigation.

iii) After release the petitioner/ accused shall not go within 200 meters of the house of the *defacto* complainant, failing which the bail is liable to be cancelled.

iv) The petitioner/ accused shall abide by the other conditions stipulated in Section 437(3) of Cr.P.C.

10. Accordingly, the Criminal petition is allowed.

Miscellaneous applications, pending if any, shall stand closed.

Date: 18.08.2022
tk

K.SURENDER, J

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Dt.18.08.2022

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