

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45623 of 2023

Arising Out of PS. Case No.-757 Year-2022 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

Nasim Ansari, Son of Imam Hasan @ Imam Hussain, Resident of village-
Sakhe Khas Inar (Ind) Roy Ke Tola, P.S. - Uchakagaon, District- Gopalganj
... .. Petitioner

Versus

1. The State of Bihar
2. Sahana Khatoon, Wife of Nasim Ansari, D/o Saheb Hussain, Resident of
Village - Satkothwan, P.S. - Uchakagaon, District- Gopalganj
... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Javed Aslam, Advocate
For the State	:	Ms. Pushpa Sinha, APP
For the O.P. No. 2	:	Mr. Shailendra Kumar Dwivedi, Advocate Ms. Anjali Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 25-10-2024 Heard learned counsel for the petitioner and learned
counsel for the opposite party no. 2 as well as learned APP for
the State.

2. This application has been filed by the petitioner seeking pre-arrest bail in connection with Complaint Case No. 757 of 2022, Trial No. 287 of 2022 registered for the offence under Section 498A of the Indian Penal Code. He has no criminal antecedent.

3. As per the prosecution story, the complainant got married with the petitioner as per Muslim rites and rituals on 05.04.2017 and out of the said wedlock, she has two children. The complainant alleged that at the time of marriage, her father



had gifted ornaments and other valuable articles to the petitioner but the petitioner further demanded furniture and sofa. When the complainant reached her matrimonial house, the petitioner and his family members started torturing her for fulfilling the demand of furniture, bed and sofa. On 24.03.2022 at 10:00 AM, all the accused persons including this petitioner assaulted the complainant with fists and slaps and ousted her from her matrimonial house. The complainant returned to her maternal house and got her treatment in the village.

4. Learned counsel for the petitioner submits that on the basis of the complaint petition and the statement of the complainant on oath as also the statement of the inquiry witnesses, the learned Magistrate has taken cognizance of the offence under Section 498A IPC and has issued summons against the petitioner.

5. It is submitted that the petitioner has an apprehension that if he would appear in the court of learned Magistrate, he may be taken into custody.

6. Learned counsel for the informant submits that the complainant has shown a prima-facie case of cruelty being inflicted upon her by the petitioner. The learned Magistrate has upon finding a prima-facie case issued summons to the



petitioner and at this stage, he is required to appear before the learned Magistrate so that the case may proceed towards its logical end.

7. Learned APP for the State submits that the petitioner need not have any apprehension of being taken into custody as there are judgments of the Hon'ble Supreme Court in the case of **Arnesh Kumar Vs. The State of Bihar and Another** reported in (2014) 8 SCC 273 and in the case of **Satender Kumar Antil-2 Vs. Central Bureau of Investigation and Another** reported in (2022) 10 SCC 51 in which the Hon'ble Supreme Court has given certain guidelines for the different category of the offences.

8. It is submitted that the petitioner may be directed to appear in the learned trial court and file an appropriate application seeking his remedy in the light of the judgment of the Hon'ble Supreme Court.

9. Having regard to the submissions noted hereinabove, this Court finds that while appreciating the principles laid down by the Hon'ble Supreme in the case of **Satender Kumar Antil-1 vs. CBI** reported in (2022) 1 SCC 773, the Hon'ble Supreme Court observed in **Satender Kumar Antil-2 (supra)** as under:-

“2. After allowing the application for intervention,



an appropriate order was passed on 7-10-2021¹. The same is reproduced as under : (*Satender Kumar Antil case*¹, SCC pp. 774-76, paras 2-11)

“2. We have been provided assistance both by Mr S.V. Raju, learned Additional Solicitor General and Mr Sidharth Luthra, learned Senior Counsel and there is broad unanimity in terms of the suggestions made by the learned ASG. In terms of the suggestions, the offences have been categorised and guidelines are sought to be laid down for grant of bail, without fettering the discretion of the courts concerned and keeping in mind the statutory provisions.

3. We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the courts below. The guidelines are as under:

Categories/Types of Offences

(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B & D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act, [Section 212(6)], etc.

(D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

(1) Not arrested during investigation.

(2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.

(No need to forward such an accused along with the charge-sheet (*Siddharth v. State of U.P.*²

1. [*Satender Kumar Antil v. CBI*, (2021) 10 SCC 773 : (2022) 1 SCC (Cri) 153]

2. (2022) 1 SCC 676 : (2022) 1 SCC (Cri) 423



CATEGORY A

After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.

(b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.

(c) NBW on failure to appear despite issuance of bailable warrant.

(d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

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34. When the courts seek the attendance of a person, either a summons or a warrant is to be issued depending upon the nature and facts governing the case. Section 87 gives the discretion to the court to issue a warrant, either in lieu of or in addition to summons. The exercise of the aforesaid power can only be done after recording of reasons. A warrant can be either bailable or non-bailable. Section 88 of the Code empowers the court to take a bond for appearance of a person with or without sureties.

35. Considering the aforesaid two provisions, courts will have to adopt the procedure in issuing summons first, thereafter a bailable warrant, and then a non-bailable warrant may be issued, if so warranted, as held by this Court in *Inder Mohan Goswami v. State of Uttaranchal*²¹. Despite the aforesaid clear dictum,



we notice that non-bailable warrants are issued as a matter of course without due application of mind and against the tenor of the provision, which merely facilitates a discretion, which is obviously to be exercised in favour of the person whose attendance is sought for, particularly in the light of liberty enshrined under Article 21 of the Constitution. Therefore, valid reasons have to be given for not exercising discretion in favour of the said person.”

10. Since maximum punishment prescribed under Section 498(A) IPC is three years, it would fall in category A, hence, on appearance of the petitioner after summon, the learned Magistrate would be obliged to follow the directions of the Hon’ble Supreme Court as noted hereinabove.

11. At this stage, this Court would also quote paragraph ‘85’ of the judgment from the case of **Satender Kumar Antil-2** (supra) as under:-

“Categories A & B

85. We have already dealt with the relevant provisions which would take care of Categories A and B. At the cost of repetition, we wish to state that, in Category A, one would expect a better exercise of discretion on the part of the court in favour of the accused. Coming to Category B, these cases will have to be dealt with on a case-to-case basis again keeping in view the general principle of law and the provisions, as discussed by us.”

12. In the light of the judgments of the Hon’ble Supreme Court, the petitioner shall appear in the learned trial court within a period of four weeks from today and file an



appropriate application. The learned trial court shall consider the same on the same date keeping in view the judgment of the Hon'ble Supreme Court and shall pass an appropriate order thereon.

13. For a period of four weeks from today, the petitioner shall not be arrested in the aforementioned case.

14. This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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