

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.85743 of 2023

Arising Out of PS. Case No.-289 Year-2021 Thana- NALANDA COMPLAINT CASE
District- Nalanda

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Kanhaiya Chaudhary (Male) Aged About 29 Years, Son Of Late Umesh Chaudhary, Resident Of Village - Kapasiya, Police Station - Kawakol, District - Nawada

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Shobha Devi (Female) Aged About 26 Years, Wife Of Kanhaiya Chaudhary, Daughter Of Ram Balak Chaudhary, Resident Of Village - Naurojpur, P.S. - Sare, District - Nalanda

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Birendra Kumar, Advocate
For the State	:	Mr. Surendra Prasad Singh, A.P.P.
For the O.P. No. 2	:	Mr. Pankaj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 16-04-2024 Heard Mr. Birendra Kumar, learned counsel appearing on behalf of the petitioner; Mr. Surendra Prasad Singh, learned APP for the State and Mr. Pankaj Kumar, learned counsel for the opposite party no.2.

2. Petitioner seeks pre-arrest bail in connection with Complaint Case No. 289(c) of 2021, registered for the offences punishable under Section 498A of the Indian Penal Code.



3. The present case relates to matrimonial dispute between the petitioner and Opposite Party No. 2, who are husband and wife respectively. In Complaint Case No. 289(c) of 2021 filed by Opposite Party No. 2, allegations of cruelty, causing hurt and wrongful restraint for non-fulfillment of dowry have been alleged against the petitioner and other in-laws of the complainant.

4. Considering the fact that the parties have not reconciled till date, I do not find it proper that the matter should be kept pending before this Court.

5. The Apex Court in the Case of ***Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273***, has laid down guideline in dealing with the matter of unnecessary arrest in cases under Section 498A IPC. It held as follows:-

“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 emphasise 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 the 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;”

6. Recently in the case of ***Asfak Alam Vs. State of Jharkhand & Anr. in Cr. Appeal No.2207 of 2023*** issued a directive to circulate circulars, notifications and instructions aimed at ensuring strict adherence by police authorities and criminal courts to follow the guidelines laid down by the Apex Court in ***Arnesh Kumar case (Supra)***.

7. Considering the rival submissions made on behalf of the parties, the allegation made in the complaint, totality of the circumstances and the fact reveals that a general and omnibus allegation has been made against the petitioner and the law laid down by the Apex Court and the guidelines issued therein in the judgment, I find that the petitioner has made out a *prima facie* case to be released on anticipatory bail. The petitioner, above named, is directed to be released on pre-arrest bail, in the event of his arrest or surrender before the learned court below within a period of four weeks from today, on furnishing bail bond of Rs.10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned J.M., Biharsharif, Nalanda/concerned court in connection with Complaint Case Case No. 289 (c) of 2021, subject to conditions



as laid down under Section 438(2) of the Cr.P.C.

8. Accordingly, the bail application stands disposed
of.

(Purnendu Singh, J)

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