

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63385 of 2025

Arising Out of PS. Case No.-2383 Year-2024 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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Aashik Kumar Sah @ Ashik Kumar Sah, S/o Surendra Sah, R/o Village -
Bagahi Bhelwa, P.S - Ghorasahan, District - East Champaran.

... .. Petitioner

Versus

1. The State of Bihar
2. Richu Kumari, D/o Pramod Sah, R/o Village - Athmuhan, Ward no. 14, P.S -
Jharokhar, District - East Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner	:	Mr. Abhishek Kumar, Advocate Mr. Hemant Ray, Advocate
For the State	:	Mr. Upendra Kumar, APP
For the Informant	:	Mr. Pramod Kumar Pandey, Advocate Mr. Akshay Tripathi, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

3 17-12-2025 The present Criminal Miscellaneous Petition has

been filed under Section 482 B.N.S.S./ 438 of the Cr.PC for

anticipatory bail in connection with Complaint Case No.2383 of

2024 by the Complainant/ O.P. No.2 herein against her

husband/petitioner herein and his family members for proposed

offence under Sections 323, 341, 498(A), 324, 504, 312 IPC,

Sections 3 and 4 of the Dowry Prohibition Act and Section 67 of

the I.T. Act.

2. However, after inquiry by learned Judicial

Magistrate, cognizance only of the offence punishable under

Section 498(A) has been taken against the husband/Petitioner



herein.

3. Subsequently, the Petitioner/Aashik Kumar Shah preferred anticipatory bail petition bearing no. 3229 of 2025 before learned Sessions Court, East Champaran at Motihari. However, the same has been disposed of by learned Sessions Judge vide order dated 08.07.2025 without rejecting or allowing it. The operative portion of the said order dated 08.07.2025 reads as follows:

“Having heard both sides and perusal of the certified copy of the complaint petition, it appears that this case is based on complaint petition and vide summoning order dated 04-06-2025, the learned Court below has found a prima facie case U/S 498-A of the IPC is made out against the petitioner-accused, which is punishable within Seven years Imprisonment. Hence, in view of decision of the Hon'ble Supreme Court in the case of **Arnesh Kumar.. Vs.. State of Bihar, (2014) 8 SCC 273** and **M.A. No. 2034 of 2022 in M.A. No. 1849 in S.L.P. (Cri) No. 5191 of 2021** titled **Satyendra Kumar Antil Vs. Central Bureau of Investigation and another**, this anticipatory bail petition filed on behalf of the petitioner-accused Aashik Kumar Sah is disposed of.”

4. The allegation as emerges from the statement of the Complainant before learned Judicial Magistrate during inquiry, is that the marriage of the complainant, who is the O.P. No.2 herein, was solemnized with the petitioner herein on 11.03.2024 and after one or two months of the marriage, demand of money started on the part of her husband/petitioner for doing business and on account of non-fulfillment of the same, she was



subjected to beating and she was even threatened to be burnt. Even a *panchayati* was held but the petitioner/husband refused to keep her in his matrimonial house and, hence, the complainant has been living at her *mai*ke (parental home) since 10.08.2024 and to Court question, she has stated that she wants to live with her husband/petitioner and she has been pregnant for nine months and her husband is not talking to her since she has been living at her *mai*ke.

5. Heard learned counsel for the Petitioner, learned APP for the State and learned counsel for the Complainant.

6. Learned counsel for the Petitioner submits that learned Sessions Court has erroneously not decided the anticipatory bail petition of the Petitioner on merit by rejecting or allowing it. He has simply disposed it of in the light of **Arnesh Kumar case (supra)** and **Satyendra Kumar Antil Vs. C.B.I. [2021(10) SCC 773]**, whereas in both the cited judicial precedents, Hon'ble Supreme Court has nowhere held that anticipatory bail petition is not maintainable or not required to be adjudicated by the jurisdictional courts in cases related with offence punishable up to seven years of imprisonment.

7. Learned Sessions Judge has also passed the order dated 08.07.2025 contrary to **Navneet Kumar Singh Vs. State**



of Bihar as reported in **2025 SCC Online Pat 2973**, passed by this Court, wherein it has been clearly held that anticipatory bail petition is maintainable despite Section 41 and 41-A Cr.PC/35 of the B.N.S.S., 2023 and in **Arnesh Kumar case (supra)**, Hon'ble Supreme Court has nowhere held that anticipatory bail petition is not maintainable in such cases.

8. He further submits that even in **Satyendra Kumar Antil case (supra)**, there is no such ruling of Hon'ble Supreme Court that in case of offence punishable up to seven years of imprisonment, anticipatory bail petition is not maintainable or jurisdictional courts under Section 438 Cr.PC/482 B.N.S.S. are not required to adjudicate the anticipatory bail petition filed by any accused.

9. On merit, learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in this case. As a matter of fact, the complainant-wife is of short temperament on account of which matrimonial dispute has arisen. He further submits that from her statement it emerges that she is willing to live with the petitioner-husband and she is already pregnant. Such statement of the complainant-wife goes to show how the complaint is false and fabricated. He also submits that the maximum punishment provided for the offence



under Section 498A is three years and there is no necessity of arrest of the petitioner in this case.

10. He further submits that the petitioner has no criminal antecedents.

11. Learned counsel for the Complainant and learned APP for the State, however, submit that learned Sessions Judge has rightly disposed of the anticipatory bail petition. They also submit that the Petitioner does not deserve anticipatory bail in view of the allegation levelled against him. Learned counsel for the Complainant/wife, who is the O.P. No.2 herein further submits that the Complainant wants to live with her husband, but he is not willing to keep her in his matrimonial home.

12. I considered the submissions advanced by both the parties and perused the material on record.

13. I find that learned Sessions Judge has committed serious error of law by not deciding the anticipatory bail petition of the Petitioner either by allowing or rejecting it. He has simply disposed it of in the light of **Arnesh Kumar case (supra)** and **Satyendra Kumar Antil case (supra)**. It appears that learned Sessions Judge has cited two judicial precedents without going through them. Neither in **Arnesh Kumar case (supra)**, nor in **Satyendra Kumar Antil case (supra)**, Hon'ble Supreme Court



has anywhere held that Sessions Judges, who have jurisdiction to hear anticipatory bail petition under Section 438 Cr.PC/482 B.N.S.S. are not required to decide anticipatory bail petitions in cases related with offence punishable up to seven years of imprisonment.

14. In **Arnesh Kumar case (supra)**, the petitioner was apprehending his arrest in a case under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act. Here, Hon'ble Supreme Court had given provisional bail in the beginning and by the final order, the provisional bail was made absolute. Refer to paras 1 and 14 of the judgment, which read as follows:

“**1.** The petitioner apprehends his arrest in a case under Section 498-A of the Penal Code, 1860 (hereinafter called as “IPC”) and Section 4 of the Dowry Prohibition Act, 1961. The maximum sentence provided under Section 498-A IPC is imprisonment for a term which may extend to three years and fine whereas the maximum sentence provided under Section 4 of the Dowry Prohibition Act is two years and with fine.

.....
14. By order dated 31-10-2013 [*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 469] , this Court had granted provisional bail to the appellant on certain conditions. We make this order absolute.”

15. Here Sections 41, 41A and 57 of Cr.PC were discussed at length. The sum and substance of the case is that the Police Officers should not arrest any accused, particularly in offence punishable up to seven years of imprisonment, without necessity and Judicial Magistrates should also refrain from



mechanical remand in such cases. Here, Hon'ble Supreme Court has also issued the following directions for the sake of Police Officers and Judicial Magistrates, which read as follows :

“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;

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 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.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.”

16. As such, Hon’ble Supreme Court in **Arnesh Kumar case (supra)** has nowhere held that in the light of Sections 41 and 41A Cr.PC, anticipatory bail petition was not maintainable and Jurisdictional Courts under Section 438 Cr.PC /482 B.N.S.S., are not required to decide the anticipatory bail petitions. In fact, anticipatory bail was granted by Hon’ble Supreme Court itself in that case, besides issuing the aforesaid directions.

17. In **Satyendra Kumar Antil case (supra)**, the meaning and import of Section 170 of Cr.PC was subject matter of discussion and in this regard, Hon’ble Supreme Court has issued guidelines for the future as is clear from the Para -1 of the judgment which reads as follows :

“Taking note of the continuous supply of cases seeking bail after filing of the final report on a wrong interpretation of Section 170 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code” for short), an endeavour was made by this Court to categorise the types of offences to be used as guidelines for the future.....”

18. However, in course of consideration, Sections 41



and 41A Cr.PC and **Arnesh Kumar Case (supra)** was also considered and directions issued by Hon'ble Supreme Court in that case was also reiterated and compliance with the same in letter and spirit was emphasized, holding as follows :

“23. Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offence, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offence, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offence, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the court and the same cannot be assured.

24. This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offence alleged is more than seven years, among other reasons.

25. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offence. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.

26. Section 41-A deals with the procedure for appearance before the police officer who is required to issue a notice to the person against whom a reasonable



complaint has been made, or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence, and arrest is not required under Section 41(1). Section 41-B deals with the procedure of arrest along with mandatory duty on the part of the officer.”

19. However, Hon’ble Supreme Court in **Satyendra Kumar Antil case (supra)**, nowhere has held that anticipatory bail petition is not maintainable in cases related with offence punishable up to seven years of imprisonment or they are not required to be decided by Jurisdictional Courts under Section 438 Cr.PC/482 BNSS.

20. Hence, it clearly emerges that learned Sessions Judge has cited the judgments in his order irresponsibly and negligently.

21. In recent judgment of **Navneet Kumar Singh (supra)**, this Court has clearly held that even in offence punishable up to seven years of imprisonment or despite the provisions of Section 41 and 41-A Cr.PC/35 of B.N.S.S., anticipatory bail petition is maintainable and jurisdictional courts are duty bound to decide the anticipatory bail petition by the Court concerned by way of either allowing or rejecting it and not simply disposing it of and referring the Petitioner to the police for relief under Section 41 and 41-A Cr.PC/35 B.N.S.S. Arrest by police without necessity and refusal of remand in such



cases were deprecated in the judgment and strict compliance with direction of Hon'ble Apex Court in **Arnesh Kumar case (supra)** and **Mohd. Asfak Alam Vs. State of Jharkhand** as reported in **(2023) 8 SCC 632** in true letter and spirit was also emphasized. The relevant part of the judgment reads as follows :

“18. If the Courts which are vested with jurisdiction to hear pre-arrest bail petitions, shut their doors and refer the petitioners to Police to get relief under Sections 41 and 41A of the Cr.PC, it would be a dooms day for the right of the people to life and liberty. Such closure of doors would blow a death knell to the edifice created against curtailment of liberty without necessity.

19. It is also equally important to point out that the Parliament has also trusted the Police to conduct proper investigation without unnecessarily curtailing the liberty of the people facing accusation. They have been given discretionary power to arrest under certain circumstances without warrant from Judicial Magistrate as stipulated under Section 41 of the Cr.PC, but Parliament had expected that our Police would be sensitive to the fact that right to arrest is one thing but necessity to exercise such right is another and they would not misuse their discretionary power of arrest without legal necessity. As a matter of guidance, the Parliament has subsequently inserted 41A into the Cr.PC for guidance to the Police how to avoid unnecessary arrest of the accused and what procedure should be followed to complete the investigation under such circumstances. But unfortunately, it has been found that the Police is not working to the expectation of the legislature. Even the Judicial Magistrates are failing in their duty to prevent illegal detention by authorizing unnecessary arrests by passing remand orders casually and mechanically. They are not refusing remand even in deserving cases. Hence, Hon'ble Apex Court was constrained to issue a direction to the Police and Judicial Magistrates in **Arnesh Kumar case (supra)** in the context of Section 41A Cr.PC and same has been reiterated by Hon'ble Apex Court in **Md. Asfak Alam case (supra)**.

20. The misuse of discretionary power by the Police to arrest without warrant and dereliction of duty on the part of the Judicial Magistrates in regard to remand of



the accused persons has led to flooding of Courts with pre-arrest and post arrest bail petitions, because people apprehending arbitrary arrest by the Police are rushing to the Courts by way of anticipatory bail petitions and those who are arbitrarily arrested are filing regular bail petitions. The result is that District Courts as well as the Constitutional Courts, including Hon'ble Apex Court, are flooded with bail petitions, clogging the justice delivery system. If the Police come to the expectation of the Parliament and avoid unnecessary arrest, and Judicial Magistrates exercise their right to remand properly, this problem of flood of bail petitions would heavily come down, and it could have been a great service to our society by making the judiciary free of unnecessary litigations. Hence, the Police and the Judicial Magistrates are expected to follow the direction of the Hon'ble Apex Court in **Arnesh Kumar case** (supra) and **Md. Asfak Alam case** (supra) in true letter and spirit of the directions. On their failure to comply with the directions, even Contempt Proceedings may be initiated.

21. Now coming back to the statutory provisions regarding the pre-arrest bail and Section 41A Cr.PC/ Section 35 of B.N.S.S., it is pertinent to point out that Section 438 Cr.PC/Section 482 B.N.S.S. provides for pre-arrest bail and the accused are given right to move Sessions Court or High Court if they are apprehending arrest in face of accusation and in such situation, the competent Courts are empowered to grant or refuse anticipatory bail to the petitioner.

22. However, Section 41(1)(b) Cr.PC deal with power of the police to arrest without warrant from Judicial Magistrate in case of cognizable offence punishable up to seven years of imprisonment subject to the conditions as provided therein. It is also provided therein if the police is satisfied that such arrest is necessary in view of the situations as mentioned therein, the police is required to record the reasons in writing for such arrest. However, when the police is satisfied that arrest is not necessary, the police is required to follow the procedure as provided under Section 41A Cr.PC which has been introduced in the year, 2009 by way of amendment. As per Section 41A, the police is required to issue notice to the accused, directing him to appear before him at such places as specified by the police and in the event of such notice being issued to the accused, it is duty of the accused to comply with the terms of the notice and if the accused complies and continues to comply with the notice, he is not required to be arrested in respect of the offence



referred to in the notice unless, for the reasons to be recorded by the police, the police opines that the accused is to be arrested. In the event of non-compliance of the terms of the notice and unwillingness of the accused to identify himself, the police is again empowered to arrest the accused for the offence as mentioned in the notice. Even otherwise, under Section 170 Cr.PC/190 of the B.N.S.S., the police is empowered to take the accused in custody after completion of the investigation if evidence is found to be sufficient to forward him to the Jurisdictional Magistrate.

23. In view of the aforesaid provisions of Section 41A Cr.PC/35 of the B.N.S.S. and Section 170 Cr.PC/190 of the B.N.S.S., apprehension of arrest to the accused never vanishes completely, even if notice is issued by the Police and all the conditions of the notice are complied with by the accused. Hence, the pre requisite for filing pre-arrest bail petition is always available to such accused to move competent Courts under Section 438 Cr.PC/482 B.N.S.S. Hence, anticipatory bail petition is maintainable despite the provisions of Section 41A Cr.PC/35 of the B.N.S.S., even if police gives notice to the accused in the event of his opinion that the arrest is not necessary for completing the investigation. This is the reason, this Court has consistently held that the anticipatory bail petitions are maintainable despite the provisions of Section 41A Cr.PC/35 of the B.N.S.S. Here one may refer to **Gauri Shankar Roy v. State of Bihar, 2015 SCC OnLine Pat 2165 (2015) 3 PLJR 618.....**”

22. However, learned co-ordinate Bench of this Court in **Naushad Ansari Vs. State of Bihar** bearing Criminal Miscellaneous No. 3536 of 2024, anticipatory bail petition was simply disposed of, the operative part of which reads as follows:

"12. After hearing the learned APP and the learned counsel for the petitioner, the present anticipatory bail application is disposed of with a direction that the concerned Superintendent of Police of every district and investigating officers of the case shall forthwith comply with the direction of the Hon'ble Supreme Court as contained in the case of Arnesh Kumar (supra) and Md. Asfak Alam (supra).



13. It is made clear that if any breach of the direction of the Hon'ble Supreme Court is brought to the notice of this court, the police and the learned Magistrate shall be dealt in terms of the Memo No. 62973 dated 19.9.2023 issued by this Court under the signature of the learned Registrar General.

14. Let a copy of this order be sent to the DGP, Bihar, Principal Secretary (Home), Government of Bihar and all the learned District Judges for its onward communication to all the Superintendents of Police, Investigating Officers and the learned Magistrates.

15. The Court directs that the police and the learned Magistrate shall completely adhere to the directions given by the Hon'ble Supreme Court in the case of Arnesh Kumar (supra) and Md. Asfak Alam (supra)."

23. Mohammad Raja Vs. The State of Bihar and

Anr. bearing Criminal Miscellaneous No. 65700 of 2025, was referred by a co-ordinate Single Bench of this Court to learned Division Bench formulating the following question:

“Whether the anticipatory bail application(s) where punishment is within seven years and have reached the stage of the Sessions Court should be considered on merit as directed in Navneet Kumar Singh (supra) case or simply disposed of following the another coordinate Bench observation in the case of Naushad Ansari (supra)?”

24. Learned Division Bench in Mohammad Raja

Case (supra) has answered the question in the following words:

“44.We are of the view that Navneet Kumar Singh and Gauri Shankar Roy laid down the correct law on the issue. At the same time, we are of the view that the decision rendered in Naushad Ansari v. State of Bihar, Criminal Miscellaneous No.3536 of 2024 does not lay down correct proposition of law and the decision made in Naushad Ansari (supra) is declared *per incurium*.”

25. Hence, it is clear that Sessions Court, who has



jurisdiction under Section 438 Cr.PC/482 BNSS to decide anticipatory bail petition, cannot simply disposed it of. He is, in fact, duty bound to decide the anticipatory bail petition by allowing or rejecting it.

26. Now coming to the merit of the case on hand, it emerges from the rival submissions of the parties that there is temperamental difference between the petitioner-husband and O.P. No.2/complainant. The complainant wants to live with her husband, but he is not willing to keep her and she is living separately with her parents at *maike*. In such situation, the complainant-wife/O.P. No.2 herein has liberty to move Family Court for restitution of conjugal rights as well as maintenance from her husband/petitioner. But in this case, there is no reason to deprive the petitioner of his liberty. Hence, it is a fit case to enlarge the petitioner on anticipatory bail.

27. Considering the aforesaid facts and circumstances, **this petition is allowed**, directing the petitioner, above-named, to be enlarged on bail, in the event of his arrest or surrender before the court below within a period of eight weeks from the date of receipt / production of a copy of this order, on his furnishing bail bonds in the sum of Rs. 10,000 /- (Ten Thousand) with two sureties of the like amount each to the



satisfaction of learned concerned Court below, in connection with Complaint Case No.C-2383 of 2024, subject to the conditions as laid down under Section 482 (2) of the B.N.S.S., 2023 and on the following conditions:

(i) In case, it is brought to the notice of the court below that the petitioner has any criminal antecedents, learned court below shall cancel the bail bonds of the petitioner after hearing him and getting satisfied that the petitioner has concealed his criminal antecedents despite his knowledge of the same.

(ii) In case, it is brought to the notice of the court below that statement regarding previous bail petition is wrong, learned court below shall cancel the bail bonds of the petitioner.

28. Learned Registrar General is directed to circulate a copy of this order amongst all Judicial Officers of Bihar District Judiciary.

(Jitendra Kumar, J.)

Chandan/Shoaib

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