

KABC010206562023



IN THE COURT OF XLV ADDL. CITY CIVIL & SESSIONS  
JUDGE, BENGALURU CITY (CCH-46)

DATED THIS THE 16TH DAY OF AUGUST, 2023

**PRESENT:**

**Sri. Manjunatha, B.A., LL.B.,**  
XLV Addl. City Civil & Sessions Judge, Bengaluru.

**CRL. MISC. No.7431/2023**

Petitioners	1.Ranjith S/o Balaraman.N, a/a 33 Yrs.,  2.Balaraman S/o Velu Nair, a/a 59 Yrs.,  3.Smt.Geetha W/o Balaraman, a/a 53 Yrs.,  All are r/o Nallamuthattil, Moochikkal, valancheri, Valanchari, Malapuram, Kerala-676552.  (By Sri/Smt: K. S. Sharan, Adv., )
	<b>AND</b>
Respondent	State by Basavanagudi Women P. S., Bengaluru City.  (By the learned Public Prosecutor)

**ORDER ON BAIL PETITION FILED U/S.438 OF Cr.P.C.,**

The learned counsel for the petitioners has filed bail petition U/s.438 of Cr.P.C. to grant an order of anticipatory bail in favour of the petitioners and also direct the respondent police to release them on bail in the event of their arrest in any case to be registered on the complaint of Smt. N. Nimmi, in the interest of justice.

2. On the basis of complaint from Smt.N. Nimmi, wife of first petitioner the respondent police may register case against the petitioners herein for the offence punishable U/s.498A of IPC. Therefore, the petitioners are apprehending arrest by the hands of respondent police. Hence, the petitioners are constrained to file this petition and thereby they have prayed for allowing the petition.

3. The learned Public Prosecutor filed objection to this petition by submitting that only LPT No.927/2023 has been registered and there is no FIR registered against the petitioners regarding any criminal case by the respondent police and therefore, there is no question of granting anticipatory bail to the petitioners. Hence, the learned Public Prosecutor has prayed for dismissal of the petition.

4. Heard the arguments on both sides and perused the materials on record.

5.The points that arises for consideration of this Court are as under:

*1.Whether the petitioners have made out sufficient ground for granting anticipatory*

*bail in their favour at this stage as sought for?*

*2.What order?*

6.This court has answered the above points are as under:

*Point No.1: In the Affirmative*

*Point No.2: As per final order*

*for the following:-*

### **REASONS**

7. **Point No.1:**Although the petition averments clearly go to show that there is apprehension on the part of petitioners that they will be arrested by the respondent Police if any case is registered against them on the complaint of Smt.N. Nimmi, but there is no documents to show that there is apprehension of arrest of petitioners by the respondent police.

8. Generally the registration of criminal case is not a condition precedent for availing benefit of anticipatory bail by the concerned petitioners/accused persons, but the petitioners have to produce sufficient materials to show that even though there is no FIR is registered against them at this stage there is an apprehension that a case as alleged offence U/s.498A of IPC, will be registered by the respondent police, causing apprehension of their arrest. As per the averments of the petition, it is alleged that on 29.10.2017 the marriage of defacto complainant was solemnized with petitioner No.1. It is the averments of the petition that as there was a matrimonial dispute, due to which the defacto complainant may file complaint before the respondent police station against petitioners. The defacto complainant due to matrimonial

dispute threatening to lodge a false case against them. In the instant case it is true that yet no case is registered against the petitioners by the respondent Police, but the defacto complainant has filed complaint against the petitioners before respondent police and based on the said complaint a case in LPT No.927/2023 has been registered and notice dated 22.07.2023 has been issued and the same is pending for enquiry.

9.It is also important to note that before taking action regarding the arrest of the petitioners, the respondent police have to follow the guidelines laid down by the Hon'ble Supreme Court ruling reported in *(2014) 8 SCC 273(Armesh Kumar Vs., State of Bihar and another)*, in which the Hon'ble Supreme Court has clearly laid down the dictum of law and guidance to the police officials that

*“they shall not arrest the accused unnecessarily without proper counseling and only on satisfaction that the persons have committed the offence the police officials to prevent such persons further in committing any offence or for proper investigation of the case, or prevent the accused from causing the evidence of the offence of to disappear or tamper with such evidence in any manner, or to prevent such person from making any inducement, threat or promise to a witness, so as to dissuade him from disclosing such facts to the Court or the police officer, or unless the accused person is arrested, if present in the court whenever required cannot be ensured. It is*

*also clearly laid down that before arrest the first police officer should have reason to believe on basis of information and materials that the accused has committed the offence. Apart from this the police officer has to be satisfied further that the arrest is necessary for one or more purposes envisaged by sub-clauses (a) to (e) of clause 1 of Sec.41 Cr.P.C., In all cases where arrest of the persons is not required U/s.41(1) Cr.P.C., police officer is required to issue notice directing the accused to appear before him at a specified time and place. The law obliges such an accused to appear before police officers and if mandates that if such an accused complies with terms of notice, he shall not be arrested, unless for reasons to be recorded, police officer is of the opinion that the arrest is necessary”.*

By applying the above dictum of law to the facts of the present case, it is found that in the instant case complaint has been lodged and notice has been issued by the respondent police regarding the conciliation U/s.498A of IPC in according to the guidelines laid down in the above case by the Hon'ble Supreme Court of India.

At this juncture I would like to quote ruling of *Hon'ble High Court of Karnataka, Dharwad Bench*, reported in *Criminal Petition No.101022/2021 dated 22.06.2021 (Ramappa @ Ramesh Vs., State of Karnataka)* Wherein the Hon'ble High Court at Para 25 has held that

***Section 41A of the Cr.P.C., defers the arrest until and unless sufficient evidence is collected, so as to produce or forward the accused to the custody of the court. The apprehension of arrest, thus, does not completely vanish away on the issuance of notice of appearance under Section 41A of the Cr.P.C., and hence, the question being raised in maintainability of an application under Sec.438 of Cr.P.C., during the pendency of notice being issued under Sec.41A Cr.P.C., or during the compliance of the terms of such notice is completely unwarranted and is not in tune with the provisions of law. The apprehension of arrest always does exist even after issue of notice of appearance under Section 41 Cr.P.C., and under such circumstances the Courts cannot evade to entertain an application under Sec.438 Cr.P.C.,***

10.It is well settled principle of law that the granting of bail, is discretionary power of the Court has to be exercised consciously and with due care, so that no blanket order is passed and every case should be considered on the basis of facts of each case. The Hon'ble Supreme Court of India have clearly held that blanket Order of Anticipatory Bail should not be generally passed unless specific event and facts is discloses by the applicant in order to enable the Court to arrive at judicial conclusion.

At this juncture I would like to quote the dictum of law laid down in the decision reported in ***(2011) 1 Supreme Court cases***

**694 (Siddharam Satlingappa Mhetre Vs., State of Maharashtra and others)** wherein the Hon'ble Supreme Court has held that :-

***“Sec.438 of Cr.P.C., is not extraordinary in the sense that it should be invoked only exceptional or rare cases – A great ignominy, humiliation and disgrace is attached to arrest – In cases where Court is of considered view that accused has joined investigation and he is fully co-operating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided, and anticipatory bail should be granted – exercise of said jurisdiction requires maintaining of perfect balance between two conflicting interests viz., sanctity or individual liberty and interest of society”.***

11. The principle laid down by the Hon'ble Supreme Court it is crystal clear that mere apprehension of arrest by the Police is sufficient to invoke the provision of Sec.438 of Cr.P.C. for grant of anticipatory bail. The apprehension of arrest always does exist even after issue of notice of appearance U/s.41 Cr.P.C., by respondent police station, and under such circumstances this Court cannot evade to entertain an application under Sec.438 Cr.P.C., Even for the sake of argument, if it is accepted that the case that would be registered against the petitioners for the alleged non bailable offence Sec.498A of IPC, the same would be triable by the Magistrate if not punishable death or imprisonment for life.

12. Further, the materials on record show that there exist a matrimonial dispute. The fact that the defacto complainant

has lodged a complaint against the petitioners before the respondent police and based on the same the respondent police have registered a case in LPT No.927/2023 has been registered and notice dated 22.07.2023 has been issued by instructing the petitioners to appear before SHO of respondent Police Station on 31.7.2023 at 16.00 hours for enquiry. The petitioners have also produced the copies of complaint and notice etc., On perusal of these documents, it is clear that there is a matrimonial dispute between the defacto complainant and petitioner No.1, which is sufficient to inspire the Court that there exists apprehension of arrest of the petitioners by the respondent police for the alleged offences as contended in the petition. At this juncture the court cannot ascertain the allegations and dispute between the parties unless the full fledged trial is completed, but the documents produced by the petitioners is sufficient to prove that the defacto complainant has filed the complaint against the petitioners for the alleged offence punishable U/s.498A of IPC, and the same is pending for enquiry.

13.At this stage, the dictum of law and guidelines laid down by the **Hon'ble Supreme Court of India in Gurbaksh Singh Sibbia V., State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465** has to be taken into consideration while granting anticipatory bail. In the said ruling the Hon'ble Supreme Court held that:-

*'What is the quantum of punishment is not much important on the other hand, the Courts ought to consider such nature and gravity of the accusation*

*and the exact role of the accused must be properly comprehended before arrest is made. Further the antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence, and the possibility of the applicant to flee from justice is also to be considered. The possibility of the accused's likelihood to repeat similar or other offences and where the accusations have been made only with the object of injuring or humiliating the applicant by arrest him or her has to be looked into. It is equally important to note that impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people has to be taken into consideration. Further the Hon'ble Supreme Court has clearly laid down caution that the Courts must evaluate the entire available material against the accused very carefully and while considering the prayer for grant of anticipatory bail, the balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused. It is also held held that while considering the objections of the prosecution, the court has to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant at time of*

*granting anticipatory bail and the frivolity in prosecution should also be taken into consideration. Also order of anticipatory bail should not be "blanket" in the sense that it should not enable the accused to commit further offences and claim relief. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident".*

14. By applying the above principles and considering the fact of the case it is found that absolutely no serious ground made out by the respondent police to reject this petition since the petitioners have produced documents to show that there is complaint pending enquiry before respondent police station, which has been filed by defacto complainant- Smt.N. Nimmi, on imposing stringent conditions regarding the availability of the petitioners for investigation, the objections of the prosecution would be met with when the petitioners have produced document to show that they are the permanent residents of Bangalore, ready to abide the conditions imposed by the Court by furnishing valid surety. Hence, in the circumstances, the petitioners have made out sufficient grounds for granting anticipatory bail in their favour at this stage as prayed. Accordingly, I answer Point No.1 in the partly **Affirmative**.

15. **Point No.2:** In view of answer of this court on point No.1, this court pass the following:-

### **ORDER**

The bail petition filed by the petitioners U/s.438 of Cr.P.C. is hereby allowed.

In the event of arrest of the petitioners by the respondent police on the basis of the complaint to be lodged by Smt.N. Nimmi for the offence as alleged in the petition U/s.498A of IPC, the concerned Investigating Officer shall release the petitioners on bail on their executing personal bond for the sum of Rs.1,00,000/- each with one surety for the like sum to his satisfaction, subject to the following conditions that:

1. The petitioners shall not threaten the prosecution witnesses and tamper with prosecution evidence in any manner,
2. They shall co-operate with the I. O. in the investigation of the case as and when called for.
3. They shall appear before the IO within 30 days from the date of this order. If the petitioners so appear before the IO, the IO shall, after interrogation, release them after obtaining necessary bonds as directed supra.

It is made clear that this bail order shall be in force for the period of three months from the date of this order.

(Typed to my dictation by the Stenographer directly on Computer, corrected by me and then pronounced in open Court on this the **16<sup>th</sup> day of August, 2023**)

(Manjunatha)  
XLV Addl. CC & SJ, Bengaluru.

**Order pronounced in the open court**  
**vide its separate order**

**ORDER**

The bail petition filed by the petitioners  
U/s.438 of Cr.P.C. is hereby allowed.

**(Manjunatha)**  
XLV Addl. CC & SJ, Bengaluru.

