



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2549 of 2017

An application under Section 482 of the Code of Criminal Procedure.

1. Arman Khan
2. Ayub Khan
3. Robi Bibi
4. Rihana Parween
5. Reshma Parween
6. Ashma Parween
7. Taher Khan
8. Gora Khan
9. Sonu @ SolemanKhan **Petitioners**

-versus-

State of Odisha **Opposite Party**

Advocates appeared in this case:

For Petitioners : None

For Opposite Party : Mr. Sarathi Jyoti Mohanty,
Additional Standing Counsel

CORAM:

HON'BLE MISS JUSTICE SAVITRI RATHO

JUDGMENT

Date of Hearing and Judgment : 9th February, 2026

Savitri Ratho, J.

This CRLMC has been filed with the following prayer:

“It is therefore prayed that your Lordship may graciously be pleased to admit this Crl.M.C. issue notice to the Opp. Party and after hearing the statement/observation made in the paragraph - 2 of the impugned notice at Annexure-3 series



showing the petitioners as convicts in the alleged offences may kindly be quashed and the condition imposed at serial No. 2 & 5 of the said impugned notice may kindly be modified to such extent to which this Hon'ble Court to deem just and proper.

And for this act of kindness, the petitioners as in duty bound shall ever pray.”

FACT OF THE CASE IN BRIEF

2. Petitioner No.1 is the husband and other petitioners are the in-laws of the informant-Anjum Bibi. She had filed 1CC Case No. 114 of 2017 in the Court of the JMFC Chandikhole against the petitioners. Pursuant to direction of the learned JMFC, under Section 156 (3) of the Cr.P.C, Balichandrapur P.S. Case No. 100 of 2017 under Section – 294/323/506/498-A/ 34 Indian Penal Code (in short “IPC”) read with Section – 4 of the Dowry Prohibition Act (in short “DP Act”), was registered against the petitioners which corresponds to G.R. case No 628 of 2017 in the file of the learned JMFC Chandikhole.

3. During investigation, the petitioners received notices under Section 41 A of the Cr.P.C, dated 28.05.2017, in Odiya language where it was stated that there was enough material to indicate that they were guilty of committing offences under Section - 294/323/506/498-A/ 34 IPC and Section – 4 of the DP Act. It was



also stated at condition (II) that accused - petitioners will appear every 15 days in the police station and before the I.O as and when required by him and will co-operate till completion of investigation and under condition No.V, it was stated that the accused-petitioners should not leave the territorial jurisdiction without prior intimation of the I.O. and shall not in any manner hamper/interfere with the investigation.

SUBMISSIONS

4. As none appeared for the petitioners, I perused the averments in the CRLMC and the order sheet in ABLPL No. 11273 of 2017 filed by Petitioner No. 1 which had been tagged to the CRLMC.

5. In the CRLMC petition it is stated that the petitioners have been granted anticipatory bail in ABLPL No. 9626 of 2017 and ABLPL No. 11273 of 2017. It is also stated that Petitioner No. 1,7,8 and 9 are working in hotels outside the district and state / doing business. Petitioner No.1 was married and residing in his matrimonial home. Petitioner No 2 and 3 were old and infirm persons. Though all of them are willing to co-operate with the investigation, the conditions were onerous and liable for interference. The notice was also illegal as it was stated therein that the petitioners were guilty of committing the offences.



6. Perusal of the order sheet in ABLPL No. 11273 of 2017 reveals that by order dated 25.07.2017 passed ABLPL No. 11273 of 2017, it had been directed that the petitioner would be released on interim bail in the event of his arrest and to appear before the I.O. for the purpose of investigation as and when required. On 22.06.2021, ABLPL No. 11273 of 2017 was finally disposed of directing the petitioner to be released on bail on his surrender before the learned JMFC within three weeks and filing an application for bail. Therefore the averment that the petitioners were released on anticipatory bail by this Court is not correct.

7. Mr. Sarathi Jyoti Mohanty, learned Additional Standing Counsel for the Opposite Party produced the instruction dated 21.03.2018 of the IIC, Balichandrapur Police Station and submitted that notices are in consonance under Section 41-A of the Cr.P.C and do not require interference. It is stated in the instructions that after completion of investigation, charge sheet dated 22.12.2017 has been submitted against the nine petitioners (who had been named in the FIR).

STATUTORY PROVISIONS

8. Section 41 A of the Code of Criminal Procedure (in short “Cr.P.C”) corresponds to Section 35 in the Bharatiya Nagarika



Suraksha Sanhita (in short “BNSS”) Both the provisions are extracted below:-

Code of Criminal Procedure, 1973 .

“Section 41A. Notice of appearance before police officer.*(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of subsection (1) of section 41, issue a notice directing 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, to appear before him or at such other place as may be specified in the notice.*

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.”

Bharatiya Nagarik Surakshya Sanhita ,2023

“Section 35. When police may arrest without warrant.—



(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who commits, in the presence of a police officer, a cognizable offence; or

(b) 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 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, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or

(c) against whom credible information has been received that he has committed a cognizable offence punishable



with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or

(d) who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or

(e) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(f) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(g) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(h) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(i) who, being a released convict, commits a breach of any rule made under subsection (5) of Section 394; or (j) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided



that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of Section 39, no person concerned in a non cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing 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, to appear before him or at such other place as may be specified in the notice.

(4) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(5) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(6) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.



(7) No arrest shall be made without prior permission of an officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age.”

JUDICIAL PRONOUNCEMENTS

9. In *Satender Kumar Antil vs CBI : 2025 INSC 909*, the Supreme Court has clarified that notice under Section 35 of the BNSS should not be through electronic communication , by directing as follows:-

“43. Hence, when viewed from any lens, we are unable to convince ourselves that electronic communication is a valid mode of service of notice under Section 35 of the BNSS, 2023, since its conscious omission is a clear manifestation of the legislative intent. Introducing a procedure into Section 35 of the BNSS, 2023, that has not been specifically provided for by the Legislature, would be violative of its intent.”

In *Satender Kumar Antil vs CBI : 2026 INSC 115*, the Supreme Court has held as follows::

“33. On the basis of the interpretation given by us, we conclude as follows:

a. An arrest by a police officer is a mere statutory discretion which facilitates him to conduct proper investigation, in the form of collection of evidence and, therefore, shall not be termed as mandatory.



b. Consequently, the police officer shall ask himself the question as to whether an arrest is a necessity or not, before undertaking the said exercise.

c. For effecting an arrest, qua an offence punishable with imprisonment up to 7 years, the mandate of Section 35(1)(b)(i) of the BNSS, 2023 along with any one of the conditions mentioned in Section 35(1)(b)(ii) of the BNSS, 2023 must be in existence.

d. A notice under Section 35(3) of the BNSS, 2023 to an accused or any individual concerned, qua offences punishable with imprisonment up to 7 years, is the rule.

e. Even if the circumstances warranting an arrest of a person are available in terms of the conditions mentioned under Section 35(1)(b) of the BNSS, 2023, the arrest shall not be undertaken, unless it absolutely warranted.

f. Power of arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023, pursuant to a notice issued under Section 35(3) of the BNSS, 2023 is not a matter of routine, but an exception, and the police officer is expected to be circumspect and slow in exercising the said power.”

ANALYSIS AND CONCLUSION

10. Section 41-A of the Cr.P.C. provides that in cases where arrest of a person is not required under the provision of Section 41(1), power has been given to the Police Officer to issue a notice directing 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, *“to appear before him or at such other place as may be specified in the notice.”*

11. As it is provided in Section 41 A that the police officer is to, *“issue a notice directing 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, to appear before him or at such other place as may be specified in the notice”*, I am of the view that it was within the power of the I.O. to issue notice to the person accused of the offence, to appear before him at the police station or at any other place as and when required for the purpose of investigation, but requiring them to appear every fifteen days was not proper. The I.O. has to be careful and specific while issuing the notice, as non compliance of the conditions of the notice would have made the person liable for arrest under Section 41 (4) of the Cr.P.C and now under Section 35(6) of the BNSS,

12. As the petitioners were accused in the case, they had to be available for the purpose of investigation. The condition not to go outside the jurisdiction of the Police Station may have been necessary as it has been stated in the petition that some of them work outside the District and State. As it has been provided in the notice that they should not leave the jurisdiction without prior intimation to the I.O.,



there was no bar for them to leave the jurisdiction after informing the I.O. They could have informed the I.O. before leaving the jurisdiction, so that investigation was not hampered. So there is no illegality in this condition.

13. As regards the contention that from the wording of the impugned notice, it appeared that the petitioners had already been held guilty of the offences, the contention has some force as trial of the case had not been held. The I.O. should therefore have been more careful while preparing the notice.

14. With these observations, the CRLMC is disposed of.

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(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated the 09th February, 2026/Subhalaxmi