

Most Urgent/Out at once

**OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE (HQ): DELHI**

No. 33045-33155/Genl./HCS/2023

Dated, Delhi the \_\_\_\_\_


28 AUG 2023

**Sub: Circulation of copy of Judgment dated 31.07.2023 passed by Hon'ble Supreme Court of India in Criminal Appeal No. 2207/2023 [Arising out of Special Leave Petition (Criminal) No. 3433/2023] titled "Md. Asfak Alam Vs. The State of Jharkhand & Anr." for information and immediate compliance.**

A copy of the letter bearing no. 6058-6070/DHC/Gaz/G-2/Judgment/2023 dated 24.08.2023 received from Hon'ble High Court of Delhi, New Delhi and a copy of Judgment dated 31.07.2023 passed by Hon'ble Supreme Court of India in the subject matter is being circulated for information and necessary compliance to :-

1. All the Ld. Judicial Officers posted in Central District, Tis Hazari Courts, Delhi.
2. The Ld. Registrar General, Hon'ble High Court of Delhi, New Delhi for information.
3. PS to the Ld. Principal District & Sessions Judge (HQs), Tis Hazari Courts, Delhi for information.
4. The Chairman, Website Committee, Tis Hazari Courts, Delhi with the request to direct the concerned official to upload the same on the Website of Delhi District Courts.
5. The Director (Academics), Delhi Judicial Academy, Dwarka, New Delhi for information as requested vide letter no.DJA/Dir.(Acd)/2019/4306 dated 06.08.2019.
6. Dealing Assistant, R&I Branch for uploading the same on LAYERS.
7. For uploading the same on Centralized Website through LAYERS.

  
28/8/23  
**(RAKESH PANDIT)**

Officer-in Charge, Genl. Branch, (C)  
Addl. District & Sessions Judge,  
Tis Hazari Courts, Delhi. 

**Encl.: As above.**

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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

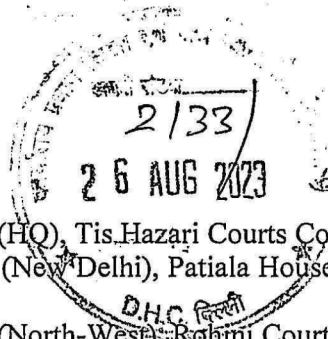
No. 6058-6070 /DHC/Gaz/G-2/SC-Judgment/2023

Dated: 24<sup>th</sup> August, 2023.

From:

The Registrar General,  
High Court of Delhi,  
New Delhi-110003.

To,

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1. ✓ The Principal District & Sessions Judge (HQ), Tis Hazari Courts Complex, Delhi.
  2. The Principal District & Sessions Judge (New Delhi), Patiala House Courts Complex, New Delhi.
  3. The Principal District & Sessions Judge (North-West), Rohini Courts Complex, Delhi.
  4. The Principal District & Sessions Judge (South), Saket Courts Complex, New Delhi.
  5. The Principal District & Sessions Judge (South-West), Dwarka Courts Complex, New Delhi.
  6. The Principal District & Sessions Judge (West), Tis Hazari Courts Complex, Delhi.
  7. The Principal District & Sessions Judge (East), Karkardooma Courts Complex, Delhi.
  8. The Principal District & Sessions Judge (South-East), Saket Courts complex, Delhi.
  9. The Principal District & Sessions Judge (Shahdara), Karkardooma Courts Complex, Delhi.
  10. The Principal District & Sessions Judge (North-East), Karkardooma Courts Complex, Delhi.
  11. The Principal District & Sessions Judge (North), Rohini Courts Complex, Delhi.
  12. The Principal District & Sessions Judge-cum-Special Judge (PC Act) (CBI), RACC, New Delhi.
  13. The Principal Judge(HQ), Family Courts, Dwarka, New Delhi.

**Sub: Judgment dated 31.07.2023 passed by Hon'ble Supreme Court of India in Criminal Appeal No. 2207 of 2023 [Arising out of Special Leave Petition (Criminal) No. 3433/2023] titled "Md. Asfak Alam vs. The State of Jharkhand & Anr."**

Sir/ Madam,

I am directed to request you to kindly download the Judgment dated 31.07.2023 passed by Hon'ble Supreme Court of India in Criminal Appeal No. 2207 of 2023 [Arising out of Special Leave Petition (Criminal) No. 3433/2023] titled "Md. Asfak Alam vs. The State of Jharkhand & Anr." from the official website of Supreme Court of India and circulate the same amongst all the Judicial Officers working under your respective control for information and necessary compliance.

Gen Br.

  
R. D. S. J. (H. Q.)  
25/8/23

Yours faithfully,



(Surender Pal)  
Deputy Registrar (Gazette-IB)  
For Registrar General.

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2023 INSC 660

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 2207 OF 2023

[ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) No. 3433 OF 2023]

MD. ASFAK ALAM

...APPELLANT(S)

VERSUS

THE STATE OF JHARKHAND & ANR.

...RESPONDENT(S)

J U D G M E N T

S. RAVINDRA BHAT, J.

1. On the previous date of hearing, i.e., on 26.07.2023, this Court heard the counsel for the parties to the Special Leave Petition. But having regard to the peculiar nature of the impugned order, kept this matter back for orders to be pronounced today.

2. Special leave granted. The appellant is aggrieved by the denial of anticipatory bail and a further direction to surrender before the Court and seek regular bail.

3. The necessary facts are that the appellant and the second respondent (hereafter referred to as "husband and wife", respectively) were married on

Signature  
Digitally signed by  
NEERA SARKAR  
Date: 2023.07.31  
17:17:13+05'30'  
Reason:

*Considering the rival submission of learned counsels and materials available against petitioner as well as gravity of allegations, I am not inclined to grant privilege of anticipatory bail to the petitioner, which stands rejected.*

*Petitioner is directed to surrender before the court below and pray for regular bail, the learned court below shall consider the same on its own merits, without being prejudiced by this order."*

6. The appellant contends that importance has been placed by the Constitution on the value of personal liberty, the necessity for arrest before filing of the charge sheet occurs when the accused's custodial investigation or interrogation is essential or in certain cases involving serious offences where the accused's possibility of influencing witnesses cannot be ruled out. Learned counsel contends that an arrest can be made does not mandate that it ought to be made in every case and emphasised that the distinction between the existence of the power (to arrest) and the justification of exercising it must always be kept in mind. It is thus argued that the procedural requirements of Section 41A of the CrPC must always be followed in this regard.

7. Learned counsel relied upon the decisions of this Court in *Arnesh Kumar v. State of Bihar and Another*<sup>4</sup>, *Satender Kumar Antil v. Central Bureau of Investigation and Another*<sup>5</sup> and *Siddharth v. State of Uttar Pradesh and Another*<sup>6</sup> to underline the submissions and also highlighted that it is only if the Investigating Officer believes that the accused may abscond or disobey summons then only, he or she needs to be taken into custody.

8. Learned counsel on behalf of the State submitted that the mere fact that a charge sheet is filed would not *per se* entitle an accused to the grant of anticipatory bail, which always remains discretionary. The Court always weighs the possibility of an accused [depending on his past conduct] of influencing witnesses or otherwise tampering with evidence. It was highlighted that the

<sup>4</sup> [2014] 8 SCR 128.

<sup>5</sup> [2022] 10 SCR 351.

<sup>6</sup> (2022) 1 SCC 676.



charge-sheet is filed, is warranted. The court held, *inter alia*, in its judgment (M.R. Shah, J) that:

*"7.6. Thus, considering the observations made by the Constitution Bench of this Court in Gurbaksh Singh Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , the court may, if there are reasons for doing so, limit the operation of the order to a short period only after filing of an FIR in respect of the matter covered by order and the applicant may in such case be directed to obtain an order of bail under Sections 437 or 439 of the Code within a reasonable short period after the filing of the FIR. The Constitution Bench has further observed that the same need not be followed as an invariable rule. It is further observed and held that normal rule should be not to limit the operation of the order in relation to a period of time. We are of the opinion that the conditions can be imposed by the court concerned while granting pre-arrest bail order including limiting the operation of the order in relation to a period of time if the circumstances so warrant, more particularly the stage at which the "anticipatory bail" application is moved, namely, whether the same is at the stage before the FIR is filed or at the stage when the FIR is filed and the investigation is in progress or at the stage when the investigation is complete and the charge-sheet is filed. However, as observed hereinabove, the normal rule should be not to limit the order in relation to a period of time."*

The concurring view expressed (by the author of this judgment) was:

*"85.3. Section 438 CrPC does not compel or oblige courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While weighing and considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified — and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The necessity to impose other restrictive conditions, would have to be weighed on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed."*

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*"9. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering 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 such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material 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 the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC."*

The court also issued valuable directions to be followed by the police authorities and the courts, in all cases where the question of grant of bail arises. Further, the court had underlined the centrality to personal liberty in its decision in *Siddharth (supra)*:

*"10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated*

(12)

the appellant, to surrender and later seek bail, therefore, cannot stand, and is hereby set aside. Before parting, the court would direct all the courts ceased of proceedings to strictly follow the law laid down in *Arnesh Kumar (supra)* and reiterate the directions contained thereunder, as well as other directions:

"I. 11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorize 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 authorizing 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 authorize 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

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13. The appeal is accordingly allowed in the above terms. The appellant is directed to be enlarged on bail subject to such terms and conditions that the Trial Court may impose. The High Courts and the Police Authorities in all States are required to comply with the above directions in the manner spelt out in the para above, within the time frame mentioned.

.....J.  
[S. RAVINDRA BHAT]

.....J.  
[ARAVIND KUMAR]

**NEW DELHI;  
JULY 31, 2023**