

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.4309 of 2022

Rahul Gola

....

Petitioner

Mr. S.C. Mohapatra, Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. S. Patra, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

13.09.2022

Order No.

03.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. The present bail application has been filed by the petitioner under Section 438, Cr.P.C. seeking anticipatory bail in connection with C.T. Case No.69 of 2022 arising out Cyber Crime P.S. Case No.01 of 2022 for commission of offences punishable under Sections 419/420/465/468/471/120-B/34, I.P.C. read with Sections 66-C/66-D of the Information Technology Act, 2000.

3. It is submitted by learned counsel for the petitioner that the offences are triable by Magistrate. In the aforesaid context, learned counsel draws attention of this Court the judgment of the Hon'ble Supreme Court in the case of *Arnesh Kumar vrs. State Bihar and another* : reported in **(2014) 8 SCC 273**. He further submits that in the present case although notice was issued under Section 41-A on 07.02.2022, which has been filed along with bail application as Annexure-3. However, learned counsel for the petitioner apprehends in the event he appears before the Police Station under Section 41-A,

Cr.P.C., he may be arrested by the police.

4. In view of the provisions of law contained in Cr.P.C. under Section 41 and 41-A, Cr.P.C. apprehension for the petitioner is entirely baseless. Further learned counsel for the petitioner also relies upon the judgment of the Hon'ble Supreme Court in the case of **Satender Kumar Antil vrs. Central Bureau of Investigation and Anr**; reported in **AIR Online 2022 SC 956** disposed of on 11.07.2022. Further, learned counsel for the petitioner submits that law laid down in the case of **Arnesh Kumar vrs. State Bihar and another**(supra) has been reported and further in paragraph-73 of the judgment in the case of **Satender Kumar Antil vrs. Central Bureau of Investigation and Anr**(supra) (para-73(b-d) and para-73. Learned counsel for the petitioner submits that the Arresting Officer is under legal obligation to issue mandatory notice under Section 41-A, Cr.P.C. to the accused and further submits that non-compliance of such mandatory provision would entitle to for grant of bail.

5. Learned counsel for the petitioner, on the other hand, submits that they have already complied with the mandatory provision as contained in Section 41-A, Cr.P.C. He further submits that the petitioner is not cooperating with the investigation and also not appearing before the Arresting Officer as and when required for the purpose of investigation.

6. Considering such submission, the petitioner is directed to appear before the Arresting Officer on or before 23rd of September, 2022 and cooperate with the investigation. The Arresting Officer is also directed to comply with the direction issued by the Hon'ble Supreme Court in the **Arnesh Kumar vrs. State Bihar and another**(supra) and in the case of **Satender Kumar Antil vrs. Central**

Bureau of Investigation and Anr (supra).

7. In the event the petitioner does not appear as directed by this Court, it is open for the Arresting Officer to proceed against the petitioner in accordance with law. However, in the event the petitioner appears and cooperate with Investigating Officer, the provisions laid down under Section 41-A be followed by the Arresting Officer.

8. The ABLAPL is disposed of accordingly.

Urgent certified copy of this order be granted on proper application.

A free copy of this order be granted to the learned counsel for the State for compliance and communication.

Jagabandhu

