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## **PRE-ARREST (ANTICIPATORY) BAIL- THE JURIDICAL REFORM**

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### **ABSTRACT**

The issue of pre-arrest bail in the non-bailable, cognizable offense was for the first time reviewed by the honorable Supreme Court of India for the first time in the case of Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 where the honorable Supreme Court of India ruled out that anticipatory bail should be considered as a part to life and personal liberty, secondly the issue of granting bail in the case of Narcotics Drugs and Psychotropic Substances Act, therefore, there have been various judgments that if there are no reasonable grounds for the arrest of the person and there are false charges levied against that person the person can be granted anticipatory bail, further the courts in India in order to avoid misuse of section 498-A of the Indian Penal Code the courts in India have come up with the landmark judgment of Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 which helped set up of a precedent for granting anticipatory bail in cases of false accusations of section 498-A of the Indian Penal Code and in order to avoid misuse of section 498-A of the Indian Penal Code.

BRILLOPEDIA

### **STATEMENT OF PROBLEM**

This paper mainly talks about the issue of granting anticipatory bail in cases of the Narcotics Drugs and Psychotropic Substances Act since the offense under this act is a non-bailable and a cognizable offense according to the statutory law, however, the statutory law is silent on the misuse of the statutory law however throughout the years the court has come up with a precedent to avoid the misuse of the law, secondly, this paper talks about anticipatory bail in cases of allegations made under section 498-A of the Indian Penal Code the courts in order to avoid misuse of this section and allow the grant of anticipatory bail have come with a precedent binding on future litigations and avoid misuse of this section.

## **LITERATURE REVIEW**

### **1. Justice M.R. Mallick- Criminal Manual**

This book is a manual that contains all criminal laws bare acts which helps the researcher to go through the nuances of criminal laws. This helps the researcher to get an understanding of the statutory law which helps the researcher to have a clear understanding of the law<sup>1</sup>.

### **2. Narcotic-Drugs-and-Psychotropic-Substances-Act-1985**

This book is a bare act that contains statutory law which helps the researcher to go through the concept of narcotics and makes the researcher understand the concept which is required in the research<sup>2</sup>.

## **RESEARCH OBJECTIVE**

1. The objective of this research paper is to go through the nuances of issues related to anticipatory bail in cases of NDPS and section 498-A of the Indian Penal Code.
2. The main focus of this research paper is to show how this issue was settled by the honorable Supreme Court of India and various state High Courts of the country.
3. The third objective of this research paper is to highlight recent developments by the courts on this issue.

## **HYPOTHESIS**

Section 438 of the Code of Criminal Procedure talks about the concept of pre-arrest bail, this section talks only about granting pre-arrest bail (anticipatory bail) to a person who has committed a non-bailable offense, however, this section is completely silent on granting of anticipatory bail in cases of NDPS and section 498-A of IPC, however after the judgment of Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 the honorable supreme court ruled out that granting anticipatory bail should be considered as a part of the right to

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<sup>1</sup> 1. Justice M.R. Mallick- Criminal Manual

2. Narcotic-Drugs-and-Psychotropic-Substances-Act-1985

life and personal liberty. Further the court in the case of Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 the honorable Supreme Court ruled out the procedure to grant anticipatory bail in order to avoid misuse of section 498-A of IPC.

### **RESEARCH METHODOLOGY**

The research methodology used by the researcher in this paper is the methodology of doctrinal research as the researcher has used the support of various judgements of supreme court of India as well as various state High Courts further the researcher has also taken the support of various articles, blogs as well as books related to the issue. This topic became interesting for the researcher while studying criminal law in his 2<sup>nd</sup> year of law. As a keen interest in criminal law, the researcher found this topic interesting to research upon.

### **CHAPTERIZATION**

1. CHAPTER 1- ANTICIPATORY BAIL UNDER NDPS Act
  - i. Bail Granted by the honorable court
  - ii. Bail rejected by the honorable court
2. CHAPTER 2- ANTICIPATORY BAIL IN CASES OF 498-A OF IPC

### **INTRODUCTION**

The concept of anticipatory bail has been incorporated into the Code of Criminal Procedure in order to provide protection to a person who thinks that he or she might get arrested in the future, the concept of anticipatory bail has been stated in section 438 of the Code of Criminal Procedure which states “Directions for Grant of bail to person apprehending Arrest”. Anticipatory bail is granted by the session court or by the high court, any person who thinks that he might get arrested may approach the sessions court or the high court for the grant of bail, and it is further upon the courts looking towards the facts and circumstances to grant bail or not, if the court feels satisfied that the applicant would not flee from justice and the further court feels that the accusation made on the applicant has been made with an object of injuring or humiliating the person by getting him arrested. Further, it stated that the person making the arrest must approach the court of the lowest jurisdiction for the first time, because if the court

of sessions rejects the bail applications the person still has the chance of approaching the high court and getting bail from the high court, but if the applicant directly approaches the high court without approaching the court of sessions and if the high court rejects the bail application the person is left with no other remedy. The concept of anticipatory bail has been over the years supervised by the courts over and the courts have set some precedents for the same, through their law-making power, the courts throughout the year have set precedents regarding anticipatory bail under the charges of 498-A of the Indian Penal Code and the charges of Narcotics Drugs and Psychotropic Substances Act.

## **1. ANTICIPATORY BAIL UNDER NDPS Act**

### **i. Bail Granted by the honorable court**

The Narcotics Drugs and Psychotropic Substances Act was brought in to control the use of narcotics substances, this act states that the sale or purchase of any kind of narcotic substances is illegal. Section 8 of this act clearly states that: -*“produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the”* is illegal<sup>3</sup>. As it is stated in section 37 of the act every offense under this act is a non-bailable and cognizable offense, this was looked up by the honorable HighCourt of Kerala in the case of State of Kerala v. Rajesh, (2020) 12 SCC 122the court observed that the offense committed by the applicant is an exception to section 37 of the Narcotics Drugs and Psychotropic Substances Act and the court granted the applicant pre-arrest bail under section 438 of the Code of Criminal Procedure, the court further, in this case, stated that since there are no reasonable grounds for believing that the accused is guilty and that he is likely to commit any offense while on bail and the court felt fully satisfied that the offense is an exception under section 37 of the Narcotics Drugs and Substances Act<sup>4</sup>. The court in this case further stated the meaning of the term reasonable grounds, the court states more than prima facie grounds and contemplates probable cause for believing that the person has not committed the crimes refers to reasonable grounds. Further in the case of RAMESH KUMAR GIRI Vs. STATE OF BENGAL The Calcutta high court granted the applicant as it was

<sup>3</sup>Narcotic-Drugs-and-Psychotropic-Substances-Act-1985.pdf, pg11-12

<sup>4</sup>State of Kerala v. Rajesh, (2020) 12 SCC 122

observed by the honorable Calcutta High Court observed that the applicant was falsely implicated, it was observed by court on the basis of the statement given by the co-accused and therefore the court granted bail to the applicant on a surety of 10,000 rupee<sup>5</sup>s.

The concept of granting anticipatory bail in cases of non-bailable, cognizable offenses was enumerated in the case of Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 in this case the honorable supreme court of India was of the view that the concept of pre-arrest bail should be considered as a part of the right to life and personal liberty, and therefore the concept of pre-arrest bail as stated under section 438 of the code of criminal procedure must be read with Article 21 of the Constitution of India<sup>6</sup>.

#### ii. **Bail rejected by the honorable court**

It is also observed that the courts throughout the years have been also strict in allowing anticipatory bail whenever after making observations the court feels that it is not in the best interest of justice to grant anticipatory bail, the court has therefore also set a precedent where the application of pre-arrest bail has been dismissed by the court of law. In the case of Satpal Singh v. State of Punjab, (2018) 13 SCC 813 The court in its judgment while referring to another case of Vinod Kumar v. State of Punjab, 2012 SCC OnLine P&H 11064 the court rejected the bail application stating the ill effects of drug addiction in society further the court<sup>7</sup>, in this case, stated that the court does not have the required level of satisfaction hence the bail and therefore the honorable Supreme Court of India had set aside the bail application which was allowed by the high court, the honorable supreme court was of the view that high court should not have passed an order under section 438 of the Code of Criminal Procedure without reference to section 37 of the NDPS Act and without looking toward the level of satisfaction required for granting bail under section 438 of the Code of Criminal Procedure<sup>8</sup>.

Therefore, through the law-making power of the courts, the courts have set precedents that anticipatory bail can be granted in a case of the Narcotics Drugs and Psychotropic Substances Act and section 438 should be read with article 21 of the Constitution of India and should be

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<sup>5</sup>CRM 687 OF 2021

<sup>6</sup>Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565

<sup>7</sup> Vinod Kumar v. State of Punjab, 2012 SCC OnLine P&H 11064

<sup>8</sup> Satpal Singh v. State of Punjab, (2018) 13 SCC 813

considered as a part of life and personal liberty and if the courts feel satisfied that the incident of NDPS is an exception under section 37 of the act, and the courts feel that it is in the best interest of justice to allow the application of anticipatory bail the courts can grant anticipatory bail in those cases<sup>9</sup>.

## 2. ANTICIPATORY BAIL IN CASES OF 498-A OF IPC

Section 498-A of the Indian Penal Code states about cruelty by the husband or any of the husband's relatives, however, throughout the years this provision was being misused, and since the offense under section 498-A of the Indian Penal Code is a non-bailable and a serious offense, therefore a person charged under this offense would be arrested as soon as he charged with that offense, in order to provide protection to the person falsely charged under this section, further in the case of *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, the honorable Supreme Court of India not only talked about the concept of bail but also ruled out issues that were not dealt with earlier like the issue of misuse of section 498-A. In this case, the wife had charged the husband with the charges of dowry, but the husband denied all of those charges and applied for an anticipatory bail in this sessions court but was rejected and further in the High Court, and then further he applied in the honorable Supreme Court of India<sup>10</sup>. Further the honorable High Court of Delhi in the case of *Naveen Rana v. State*, 2015 SCC OnLine Del 12311 the applicant had applied for anticipatory bail in the honorable Sessions Court but the bail application was dismissed by the Sessions Court, the applicant further approached the Delhi High Court for the grant of Anticipatory Bail, and the honorable Delhi High Court was of the opinion that since the applicant is having a clean record and has been cooperating with the police since the orders have been passed, the only ground for which the Anticipatory Bail was being opposed was that the stridhan which belonged to the wife was in possession of the husband, the court stated that section 498-A is not for recovery of stridhan<sup>11</sup>. The honorable Delhi High Court through its Law making power was able to set a precedent for future cases that if an applicant is cooperating with the investigating authorities and the applicant has clean records he can be granted bail further the court further also ruled out that section 498-A of the Indian Penal Code is not for recovery of article like stridhan. Further in a recent judgment of *Ashwin Babu Ji Vs. The State of Maharashtra* the

<sup>9</sup>*Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565

<sup>10</sup> *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273

<sup>11</sup>*Naveen Rana v. State*, 2015 SCC OnLine Del 12311

applicant and his father were suffering from charges of 498-A and 377 of the Indian Penal Code, the applicant was reported as having unnatural sex, and the father was reported for assaulting the complainant, in this case, the court observed in this case that the allegations are vague in nature because the incident of unnatural sex was not reported to anyone further the allegations against the father of the applicant in that the court observed that the incident took place on 11/12/2018 and it was never reported till 21/04/2022, the court observed that further, the mother of the applicant had also filed a complaint against the complainant the court observed that the complaint filed against the applicant and his father were not serious in nature and the court allowed the anticipatory bail<sup>12</sup>. Through this case, the honorable High Court of Bombay was able to set a precedent that if the allegations made against the applicant who has applied for anticipatory bail are vague and omnibus, the court can allow anticipatory bail.

### **CONCLUSION**

The judicial intervention in the concept of pre-arrest bail has been able to rule out those issues which were not dealt with earlier, through the law-making power of the court, the court was able to come up with a ruling that section 438 of the Indian Penal Code should be read with Article 21 of the Constitution of India through the landmark judgment of GURBAKSH SINGH SIBIA Vs. STATE OF PUNJAB, further issue of anticipatory bail in cases of Narcotics Drugs and Psychotropic Substances has also been dealt with by the supreme court as well as the various state high courts of the country which have been able to set precedents for such future cases, further the issue of anticipatory bail in cases of section 498-A of the Indian Penal Code the court has set the precedent through a landmark judgment of Arnesh Kumar Vs. State of Bihar the honorable Supreme Court of India was able to set a precedent in order to grant anticipatory bail in cases of section 498-A of the Indian Penal Code and to avoid misuse of section 498-A of the Indian penal code.

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<sup>12</sup>ABA/1378/2022 of ASHWIN Bahubhai Prajapati AND ANR Vs. STATE OF MAHARASHTRA