

ITEM NO.1

COURT NO.7

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (CrL.) No.16221/2025

[Arising out of impugned final judgment and order dated 04-07-2025 in ABA No. 2319/2025 passed by the High Court of Jharkhand at Ranchi]

OM PRAKASH CHHAWNIKA @ OM PRAKASH CHABNIKA
@ OM PRAKASH CHAWNIKA

Petitioner(s)

VERSUS

THE STATE OF JHARKHAND & ANR.

Respondent(s)

Date : 23-04-2026 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) :Mr. Kumar Shivam, AOR
Mr. Sameer Ranjan, Adv.

For Respondent(s) :Ms. Pallavi Langar, AOR
Ms. Pragya Baghel, Adv.
Mr. Sujeet Kumar Chaubey, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The High Court has denied anticipatory bail to the petitioner in connection with Complaint Case No. 6181 of 2021, instituted at the instance of the Respondent No.2 before us (original complainant), for the offence punishable under Sections 323, 420, 467, 468, 471 and 120B read with 34, respectively, of the Indian Penal Code, 1860 (for short "the IPC").

2. *Prima facie*, it appears from the allegations levelled in the complaint and the other materials on record that there is a dispute between the complainant (Respondent No.2) and the petitioner (original accused) before us with respect to two plots of land bearing nos. 1608-1609, respectively, admeasuring 110 kathas.

3. We are not concerned with the case put up by the complainant at this stage. We are concerned with something which we should not overlook or ignore. The impugned order passed by the High Court denying anticipatory bail reads thus:-

"Heard learned counsel for the parties.

2. It appears that this petitioner earlier filed an anticipatory bail application being A.B.A. No. 8063 of 2022 which was disposed of vide order dated 13.03.2023 with the following directions: "Petitioner is directed to surrender before the court below and seek regular bail which shall be disposed off on its own merits in accordance with the guidelines laid down by the Hon'ble Supreme Court of

India in the case of Satender Kumar Antil Vs. Central Bureau of Investigation & Anr reported in 2021 (10) SCC 773.

3. No fresh and new ground has been pointed out by the learned counsel for the petitioner for entertaining this second Anticipatory Bail Application, therefore, A.B.A No. 2319 of 2025 stands dismissed."

4. The High Court, while passing the impugned order, has made a reference of its earlier order passed in Anticipatory Bail Application No.8063 of 2022 which came to be disposed of on 13.3.2023.

5. We should also look into this order of 13th March, 2023, referred to above. The High Court after looking into the facts of the matter issued the following directions, which reads thus:-

"Petitioner is directed to surrender before the court below and seek regular bail which shall be disposed off on its own merits in accordance with the guidelines laid down by the Hon'ble Supreme Court of India in the case of Satender Kumar Antil Vs. Central Bureau of Investigation & Anr. reported in 2021(10) SCC 773."

6. Thus, not only the High Court declined to grant anticipatory bail as prayed for by the petitioner but also directed the petitioner to surrender before the Court and seek regular bail.

7. We have noticed that there is a serious problem in two States, viz. the State of Bihar and State of Jharkhand, respectively. We fail to understand that in a private complaint how does the Police involve itself or is concerned, in any manner. What was the basis for the accused to express apprehension that the police would arrest them.

8. In a private complaint when cognizance is taken and process is issued all that the Court would do is to issue summons. We have explained many times in the past the purport of Section 87 of the Criminal Procedure Code, 1973 (for short, "the Cr.PC.") The Section 87 of the Cr.PC. reads thus:-

"87. Issue of warrant in lieu of, or in addition to, summons.—A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest—

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure."

9. Section 87 empowers the Court to issue warrant in lieu of, or in addition to, summons. However, this power has to be exercised only in two contingencies as explained by the

provision itself, i.e, (a) and (b), referred to above, respectively.

10. Once the Court takes cognizance and issues summons, all that the accused has to do is to appear before that Court and join the proceedings. Why should the accused go before the Sessions Court or the High Court, as the case may be, and pray for anticipatory bail? Police has no power to arrest the accused in a complaint case unless there is a non bailable warrant issued by that Court along with the summons.

11. We may give one another simple illustration. Take a case wherein on a private complaint, the magistrate deems fit to take cognizance under Section 200 of the Cr.PC. but postpones the issue of process till the conclusion of the magisterial inquiry under Section 202 of the Cr.P.C. If a magistrate orders a Police inquiry under Section 202 and asks the police to give a report, then whether in the course of such inquiry, the police can arrest the accused. The answer is an emphatic "NO", Police has no powers to arrest even during the course of the inquiry under Section 202 of the Cr.PC.

12. The aforesaid aspects need to be kept in mind by the High Courts. Unnecessarily anticipatory bail applications are entertained and when rejected the litigants have to travel all

the way upto the highest Court of this Country. We also remind the High Court that the direction issued that the petitioner should surrender and seek regular bail before the Court was also wholly without jurisdiction.

13. If the Court wants to reject the anticipatory bail, it may do so but the Court has no jurisdiction to say that the petitioner should now surrender.

14. We are informed by the learned counsel appearing for the parties that the trial is in progress. In such circumstances, referred to above, nothing further is required to be done in the matter. This petition is accordingly disposed of.

15. Registry is directed to forward one copy of this order to the Registrar General of the High Court of Bihar and also the Registrar General of the High Court of Jharkhand, respectively who in turn shall place this order before the Hon'ble Chief Justice of the respective High Courts.

16. We also impressed upon the learned counsel appearing for the State to look into this issue and guide the State accordingly.

17. With the aforesaid, the Special Leave Petition stands disposed of.

18. Pending application(s), if any, stands disposed of.

(CHANDRESH)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)