

IN THE HIGH COURT OF JHARKHAND, RANCHI
A.B.A. No. 771 of 2026

Sunil Kujur, aged about 37 years, son of Murdla Kujur, resident
of Doriya Toli, Balalong, PO – Balalong, PS – Nagri, District –
Ranchi, Jharkhand

.... Petitioner

-- Versus --

The State of Jharkhand

.... Opposite Party

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :- Mr. Birendra Kumar, Advocate

For the State :- Mrs. Kumari Rashmi, Advocate

03/11.02.2026 Heard learned counsel appearing for the petitioner as well
as learned counsel appearing for the State.

2. The petitioner is apprehending his arrest in connection with
Nagri P.S. Case No.78 of 2022, for the alleged offences registered
under Sections 376(G) of Indian Penal Code and Section 4/6 of
POCSO Act pending in the Court of learned Additional Judicial
Commissioner-IV-cum-Special Judge, POCSO, Ranchi.

3. Learned counsel appearing for the petitioner submits that
the petitioner has been falsely implicated in a case registered under
Section 376(G) of Indian Penal Code. He further submits that the
police has investigated the matter and submitted the charge-sheet
wherein the petitioner has not been sent up for trial and it has been
disclosed in the charge-sheet itself that the petitioner is innocent,
however, charge-sheet has been submitted against two other

accused persons. He then submits that thereafter learned Court has been pleased to take cognizance against two of the accused persons and so far this petitioner is concerned learned Court has not proceeded and not taken cognizance. He next submits that in the trial the victim has filed a petition under Section 319 of Cr.P.C. and pursuant to that summon has been issued. He also submits apart from that no other witnesses have said anything and it has not been discussed in the order of learned Sessions Judge and learned Sessions Judge has been pleased to reject the anticipatory bail application of the petitioner saying it is not maintainable and observed that the petitioner is required to appear in person and pray for regular bail. He next submits that finding of learned Sessions Judge is not in accordance with law.

4. Learned counsel appearing for the State submits that the learned Court seeing the statement of victim has called upon the petitioner under Section 319 of Cr.P.C. to face the trial.

5. From the charge-sheet annexed with the petition, it transpires that the petitioner was not sent up for trial and two other accused persons have been charge-sheeted. Learned Court has also not been pleased to take cognizance against the petitioner and in the trial only the victim has stated pursuant to that the learned Court has issued the same against the petitioner exercising power under Section 319 of Cr.P.C. and the learned Court has been pleased to hold that the said anticipatory bail was not maintainable.

6. A perusal of Section 319 of the Cr.P.C. would clearly indicate that on the objective satisfaction of the court a person may be 'arrested' or 'summoned' as the circumstances of the case may require if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons. The court should exercise judicial discretion on a consideration of the totality of the facts and circumstances of a given case and in a manner where proper procedures are followed that are fundamental to the right of fair trial of the accused. The section demands more circumspection by the Trial Court while exercising its powers since it confers an extraordinary power and should be used by the court very sparingly thereby ensuring that principles of rule of law and basic tenets of criminal law jurisprudence are not vitiated.

7. In order to examine the reasoning of the Trial Court, the case is to be understood in its own facts and circumstances. In the case in hand, the Trial Court after appreciating the evidence of the victim only summoned the petitioner to face the trial and he has been called to face the said trial in a non-bailable case. In the legislative history for the purposes of bail, the term 'bailable' and 'non-bailable' are mostly used to formally distinguish one of the two classes of cases, viz. 'bailable' offences in which bail may be claimed as a right in every case whereas the question of grant of bail in non-bailable offences to such a person is left by the legislature in

the court's discretion to be exercised on a consideration of the totality of the facts and circumstances of a case. The discretion has, of course, to be a judicial one informed by tradition methodized by analogy, disciplined by system and sub-ordinated to the primordial necessity of order in social life. Another such instance of judicial discretion is the issue of non-bailable warrant in a complaint case under an application of Section 319 of Cr.P.C., however, the power under Section 319 of the Cr.P.C being discretionary must be exercised judiciously with extreme care and caution. The Court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

8. In light of above apprehension of arrest must be based on tangible facts and reasonable apprehension of arrest. The question remains as to whether in the facts of the present case the petitioner has a reasonable apprehension of being taken into custody is to be seen and considered. As already stated, the petitioner has been summoned to appear before the trial Court being added as an accused person in the ongoing trial on the strength of the power under Section 319 of Cr.P.C.

9. Sub-Section (3) of Section 319 Cr.P.C. is clear to the extent

that the Court has power to detain a person also appearing upon summons. In light of that to such extent, therefore, the apprehension of the petitioner can be treated as genuine and reasonable. If the trial Court decides to detain the petitioner exercising power under Sub-Section (3) of 319 Cr.P.C. upon his appearance it would tantamount to curtailment of his liberty and in that case right to liberty guaranteed under Article 21 of the Constitution comes into play. The learned trial court only on the testimony of the informant has called upon the petitioner to face the trial. On the other hand, the police has investigated the matter and the petitioner has not been sent up for trial and even the learned trial court has not been pleased to take cognizance against the petitioner.

10. In light of above discussion and the reasons this petition is being disposed of directing the petitioner to surrender before the learned Trial Court within a period of two weeks from today. It is further directed that in the event the petitioner surrenders and appears before the trial court then he will be admitted to bail to the satisfaction of learned trial court.

11. In view of above observation, this petition is allowed and disposed of.

(Sanjay Kumar Dwivedi, J.)

Dated 11.02.2026
Sangam/
A.F.R.