

BRIEFING PAPER:

ARNESH KUMAR VERSUS STATE OF BIHAR & ANR.

Decided on: 02/07/2014

Quorum: JJ. Chandramauli Kr. Prasad and Pinaki Chandra Ghosh

Draft By: Aphune K. Kezo

Edited By: Jaishree Suryanarayanan



COMMONWEALTH HUMAN RIGHTS INITIATIVE
55A, Third Floor, Siddartha Chambers, New Delhi – 110 016
T +91 11 43180200, F + 91 11 43180217
info@humanrightsinitiative.org
www.humanrightsinitiative.org

INTRODUCTION

"We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is another"¹

Supreme Court in *Arvindh Kumar* [MANU/SC/0559/2014](#) para 8

CODE OF CRIMINAL PROCEDURE,

(1) 41 When police may arrest without warrant

(2) Any police officer may without an order from a Magistrate and without a warrant, arrest any person –

a) x x x x x

b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence for a term which may be less than seven years or which may extend to seven years with or without fine, if the following conditions are satisfied, namely :-

(i) x x x x x

(ii) the police officer is satisfied that such arrest is necessary –

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such persons from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required

This judgment is the result of the Supreme Court's anxiety over the abuse of the power to arrest by the police resulting in indiscriminate, widespread and unnecessary arrests. Though delivered in the context of the alleged misuse of Section 498A, Indian Penal Code, the Court has emphatically declared that the directions given in the **judgment will apply to all cases where the offence is punishable with imprisonment for a term of seven years or less, with or without fine.**

Amendment of the legal provisions pertaining to arrest

This judgment comes in the wake of the non-implementation of the amended provisions pertaining to the powers of the police to arrest in the Code of Criminal Procedure (CrPC).

Law Commissions, Police Commissions and the higher judiciary have repeatedly emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. However, police officers make arrests as they believe that they possess the power to do so. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result.

Section 41 (1)(b) was incorporated pursuant to the recommendation of the Law Commission in its 177th Report submitted in the year 2001, which highlighted the value of proportionality in the matter of arrests. The police officer must satisfy the reasonable conditions laid down to determine if arrest is necessary.

The Law Commission recognized “liberty” to be the most precious of all the human rights. Equal importance was given to peace and law and order in the society. Proper implementation of law is required to maintain a balance between the necessity to protect and promote the liberty of an individual and the necessity to maintain peace and law and order in the society.

The Report divulged that an overwhelming percentage of arrests conducted in various States were done by the Police without warrant. The people in poverty are usually at the receiving end.

FACTS OF THE CASE

The wife of Arnesh Kumar alleged that she was driven out of the home due to non-fulfillment of the demand for dowry that included Rupees 8 lacs, maruti car, an air-conditioner, television set, etc. These demands were made by her mother-in-law and father-in law and Arnesh Kumar supported them by raising threats that he would marry another woman.

Arnesh Kumar preferred an anticipatory bail application as he apprehended arrest under Section 498A of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961, which was denied to him by the Sessions Court and the High Court. He, thereafter, moved a Special Leave Petition under Article 136 before the Supreme Court.

ISSUE BEFORE THE COURT

☞ Whether the proper procedure was followed in determining the necessity of arrest by the police?

DECISION OF THE COURT

The court gave its decision on the following points pertaining to the duties of the police in exercising the power to arrest and the duties of the Magistrates in checking and preventing unnecessary and illegal arrests.

✓ **Duties of the police**

👉 **Need for Caution in Exercising the Power to Arrest**

Referring to the police, the court says,

"It has not come out of its colonial image despite six decades of independence, is largely considered as a tool of harassment, oppression and surely not considered a friend of public."¹
... "The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive."²

Emphasizing the need to exercise caution and to act prudently on the part on the part of the police, the court says,

"The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from the power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation."³

Implications of Section 41 (1)(b)

As stated earlier, pursuant to the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the CrPC came to be enacted in its present form.

Under the amended section, a person accused of an offence punishable with imprisonment for a term of seven years or less, with or without fine, cannot be arrested by the police officer unless he is satisfied that one or more conditions prescribed in the section are present. The arrest cannot be made merely because the police officer is satisfied that the person has committed an offence.

Arrest should be based on information and material

The police officer should have reason to believe on the basis of information and material that the accused has committed the offence. He has to be further satisfied that

¹ Arnesh Kumar, Para 7, [MANU/SC/0559/2014](#)

² *Ibid*, para 7

³ *Ibid*, para 8

the arrest is necessary for one or more purposes provided under sub-clauses (a) to (e) of Section 41 (1).

Reiterating the implication of the conditions necessary for arrest under the section, the court held:

"... 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."⁴

Reasons to be given for the arrest

The decision to arrest or not should be based on facts. The police officer has to state the facts and record the reasons in writing which led him to conclude that arrest is necessary. He will need to specify the sub-clauses of Section 41 (1) under which the decision to arrest is taken. Similarly, the police officer has to record the reasons in writing for not making an arrest.

Emphasising the importance of following Section 41 in its letter and spirit, the court held:

"We would like to emphasize that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued."⁵

✓ **Duties of the Magistrate**

First Production Before a Magistrate Within 24 hours

The accused arrested without warrant by the police has the fundamental right under Article 22(2) of the Constitution of India read with Section 57, Cr.PC to be produced before a magistrate without unnecessary delay and in no circumstances beyond 24 hours, excluding the time necessary for the journey. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is

Article 22 – Protection against detention and arrest in certain cases

(1) x x x x x

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the magistrate and no person shall be detained beyond the said period without the authority of the magistrate.

x x x x x x

4. *Ibid*, para 8

5. *Ibid*, para 12

authorised by the Magistrate in exercise of power under Section 167 CrPC.

📌 Importance of the Magistrate's Role under Section 167, CrPC

Emphasising the role of a Magistrate at the time of first production, the Court held:

“The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution”⁶

Taking note of the reality, the court says:

“Our experience tells us that it is not exercised with the seriousness it deserves. detention is authorized in a routine, casual and cavalier manner.”⁷

📌 Duty of a Magistrate at the time of first production before authorizing detention under Section 167

Elaborating on the duty of a Magistrate before authorizing detention under Section 167, Cr.PC, the court held:

“.....he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied. If the arrest affected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorize his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest under Section 41 Cr.PC has been satisfied and it is only thereafter that he will authorize the detention of an accused.”⁸

📌 Judicial Scrutiny by Magistrate in Arrests without Warrant

Laying down the parameters of judicial scrutiny by a Magistrate, the court held:

6. *Ibid*, para 9
7. *Ibid*, para 9
8. *Ibid*, para 9

*Criminal Procedure Code
Section 167- Procedure
when investigation cannot
be completed in twenty-four
hours.*

(1)
(2)
(a)
(b) no Magistrate shall authorize detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;
X X X X X X

“... when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant and secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted.”⁹

The Magistrate's decision to authorise detention has to be based on his objective satisfaction

The Magistrate's decision to authorize detention cannot be based simply on what the police say. Emphasizing on the necessity of a Magistrate to form an objective opinion of his own, the court held:

“..... the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorizing the detention and only after recording its satisfaction in writing that the Magistrate will authorize the detention of the accused.”¹⁰

Reasons to be recorded by the Magistrate for authorizing detention

The Magistrate before authorizing detention has to record his own satisfaction and this must be reflected in his order of remand.

Implication of Section 41A, Cr.PC

Section 41A provides for issue of notice of appearance in all cases where the arrest of a person is not required under Section 41 (1). Such a notice will direct the accused to appear before the concerned police officer at a specified time and place. The accused has to appear pursuant to the notice and failure to do so **may** result in his arrest. Focusing on the need to vitalise Section 41A in order to avoid unnecessary arrest, the court held:

⁹ *Ibid*, para 9

¹⁰ *Ibid*, para 9

“At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr.PC has to be complied and shall be subject to the same scrutiny by the Magistrate...”¹¹

DIRECTIONS:¹²

❖ **To the State Government:**

- All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC
- All police officers be provided with a check list containing specified sub-clauses under Section 41(I)(b)(ii)

❖ **To the Police:**

- The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention
- 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
- Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing

❖ **To Magistrates:**

- The Magistrate while authorising 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 authorise detention

❖ **Effect of Non-compliance of these directions:**

¹¹ *Ibid*, para 11

¹² *Ibid*, para 13

- Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction
- Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court

In sum and substance, allegation levelled by the wife against the appellant is that demand of Rupees eight lacs, a maruti car, an air-conditioner, television set etc. was made by her mother-in-law and father-in-law and when this fact was brought to the appellant's notice, he supported his mother and threatened to marry another woman. It has been alleged that she was driven out of the matrimonial home due to non- fulfilment of the demand of dowry.

Denying these allegations, the appellant preferred an application for anticipatory bail which was earlier rejected by the learned Sessions Judge and thereafter by the High Court.

There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1, 97,762 persons all over India during the year 2012 for offence under Section 498-A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.P.C. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need

for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short 'Cr.PC'), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest. As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may extend to seven years and fine, Section 41(1) (b), Cr.P.C which is relevant for the purpose reads as follows:

“41. When police may arrest without warrant.-(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person –

(a) x x x x x

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely :-

(i) x x x x x

(ii) the police officer is satisfied that such arrest is necessary – to prevent such person from committing any further offence; or for proper investigation of the offence; or to prevent such person 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 any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

X x x x x From a plain reading of the aforesaid provision, it is evident that a person accused of 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 its satisfaction that such person had committed the offence punishable as aforesaid. 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. 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. 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 of Cr.PC.

An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57, Cr.P.C. to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 Cr.P.C. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner. Before a Magistrate authorises detention under Section 167, Cr.P.C., he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest under Section 41 Cr.PC has been satisfied and it is only thereafter that he will authorise the detention of an accused. The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making

inducement etc., the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording its satisfaction in writing that the Magistrate will authorise the detention of the accused. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant and secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

Another provision i.e. Section 41A Cr.P.C. aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalised. Section 41A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008(Act 5 of 2009), which is relevant in the context reads as follows:

“41A. Notice of appearance before police officer.-(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.” Aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1), Cr.P.C, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such

an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41Cr.PC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

We are of the opinion that if the provisions of Section 41, Cr.P.C. which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.P.C. for effecting arrest be discouraged and discontinued.

Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C.;

All police officers be provided with a check list containing specified sub- clauses under Section 41(1) (b) (ii);

The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

The Magistrate while authorising 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 authorise detention;

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;

Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance.

By order dated 31st of October, 2013, this Court had granted provisional bail to the appellant on certain conditions. We make this order absolute.

In the result, we allow this appeal, making our aforesaid order dated 31st October, 2013 absolute; with the directions aforesaid.

.....J (CHANDRAMAULI KR. PRASAD)
.....J (PINAKI CHANDRA GHOSE) NEW
DELHI, July 2, 2014.

"Narendra Parihar v State of Rajasthan (Bail Order dated 11 July 2014)"

INDIA
INDIA
MISC. BAIL APPLICATION NO. 5658/14
Vs. State of Raj.

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

S.B. CRI. MISC. BAIL APPLICATION NO. 5658/14

PETITIONER:
Narendra Parihar S/o Sukhdev Parihar, R/o
Mandir, Ghanchiyon Ka Baas, P.S. Mahamandir

VERSUS

RESPONDENTS: State of Rajasthan

SECTION
JODHPUR
INSTITUTIONAL SECTS
Jodhpur
J.A. Sr. J.A.
U.S. 498(A), 406,
323 IPC.

पञ्जाब
राजस्थान

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

ORDER

S.B.CRIMINAL MJSC, BAIL APPLICATION NO.5658/2014
(Narendra Parihar vs. State of Rajasthan)

DATE OF ORDER : : : : : 11.07.2014

HON'BLE MR.JUSTICE MAHESH CHANDRA SHARMA

Mr.Mahesh Bora, Sr.Adv. With Mr.Arpit Menta, for
petitioner/s.
Mr.Rajesh Bhati, Mr.C.S.Ojha & Mr.KK Rawal, Public Prosecutor
for State.
Mr.N.R.Goshwami, for the complainant.



This bail application has been filed under Section 438
Cr.P.C.

Brief facts of the case are that complainant Seema lodged
an FIR bearing No. 78/14 to the effect that she got married with
petitioner on 11.8.98. After 10-15 days, her husband started
harassing her and demanding dowry. On 20.1.99, she was
shunted out from the house. After a month, husband took her
back to his house and on 13.2.2000, a son was born out of the
wedlock. After sometime the behaviour of her husband remained
normal, but it started deteriorating with the lapse of time upto
2014. On 19.5.14 and 22.5.14, husband, brother-in-law and
other members came to the house of complainant and created
nuisance. On that, this FIR was lodged.

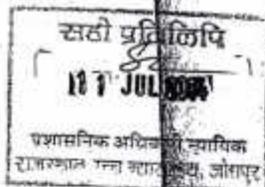
Learned counsel for the petitioner has contended that
marriage of complainant and petitioner took place before 16
years back approximately, petitioner is not an habitual offender,
and he has been falsely implicated in this case. In support of his
submission, he has placed reliance on the judgment of Hon'ble
Apex Court in Criminal Appeal No. 1277/2014 (Special Leave
Petition (cr.) No.9127/2013)-Arnesh Kumar Vs. State of
Bihar and anr., decided on 2.7.2014, whereby the Hon'ble
Apex Court has issued the following directions:

" Our endeavour in this judgment is to ensure that
police officers do not arrest accused unnecessarily
and Magistrate do not authorise detention casually

सं. प्रतिलिपि
8
NO 71 JUL 2014
प्रशासनिक अधिकारी
राजस्थान उच्च न्यायालय, जोधपुर

and mechanically. In order to ensure what we have observed above, we give the following direction:

- (1) All the State Governments to instruct its police officers not to automatically arrest when a case under Sec.498A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Sec.41 Cr.P.C.;
- (2) All police officers be provided with check list containing specified sub-clauses under Section 41 (1)(b)(ii);
- (3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;
- (4) The Magistrate while authorising 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 authorise detention;
- (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;
- (6) Notice of appearance in terms of Section 41A of Cr.P.C be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of police of the District for the reasons to be recorded in writing;
- (7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they



shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction;

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

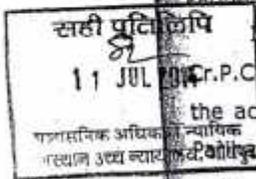


We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498A of the I.P.C. Or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

We direct that a copy of this Judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance."

Learned Public Prosecutor as also learned counsel for the complainant have opposed the bail application.

Without expressing any opinion on the merits of the case, at this stage, I deem it just and proper to grant anticipatory bail to the accused petitioner/s Narendra Parihar S/o Sukhdev Parihar under section 438 Cr.P.C.



In the result, this bail application filed under section 438 Cr.P.C is allowed and it is directed that in the event of arrest of the accused petitioner/s namely Narendra Parihar S/o Sukhdev Parihar in F.I.R. No.78/2014 Police Station Mahila (East), Jodhpur, he/they shall be released on bail by the concerned SHO/Investigating Officer, provided he/they shall submit personal bond in the sum of Rs. 1,00,000/- (rupees one lac) with

two sureties in the sum of Rs.50,000/- (rupees fifty thousand) each to the satisfaction of SHO/Investigating Officer/Arresting Officer of the concerned police station, on the following conditions :

a) that the petitioner/s shall make himself/themselves available for interrogation by a police officer as and when required;

b) that the petitioner/s shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/them from disclosing such facts to the Court or to any police officer;

c) that the petitioner/s shall not leave India without the previous permission of the court.

d) That the petitioner/s shall not commit any offence similar in nature to the offence of which he/they is/are accused.

e) The Deputy Registrar (Judl.) is directed to supply the copy of this order to the Chief Secretary, Home Secretary and Director General of police immediately.

g) Copy of this order be sent to the Chief Secretary, Home Secretary, Director General of Police of the State, with the direction to distribute the copy of this order to all S.P. And D.C.P for necessary compliance.

h) The Director General of Police is further directed to supply the copy of this order to all the concerned Police Officials.

i) Copy of this order be also provided/sent to the Advocate General of Rajasthan, all Government

Advocates of Jodhpur and Jaipur, the President, Rajasthan High Court Advocate Association, Jodhpur and the President, Rajasthan High Court Lawyer's Association, Jodhpur.

सही प्रतिलिपि
11 JUL 2014
प्रशासनिक अधिकारी न्यायिक
राजस्थान उच्च न्यायालय, जोधपुर

sandeep/26

(Mahesh Chandra Sharma) J.

ABOUT CHRI

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. CHRI's objectives are to promote awareness of and adherence to the Harare Commonwealth Declaration, the Universal Declaration of Human Rights, and other internationally recognized human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

The Prison Reform Programme of CHRI is focused on increasing transparency of a traditionally closed system and exposing malpractice. The programme aims to improve prison conditions, reform prison management, enhance accountability and foster an attitude of cooperation between the various agencies of the criminal justice system in place of the prevailing indifference and discrimination. It seeks to achieve its goals through research, legal analysis and advice, advocacy, capacity building, network building and conference facilitation.