

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL PETITION No.3311 of 2015

ORDER

The petitioner, who is an accused, filed the present application under Section 438 Cr.P.C. seeking release in the event of his arrest in connection with Crime No.239 of 2014 of Asif Nagar Police Station, Hyderabad, registered for the offences punishable under Sections 420 and 506 IPC.

2. Though the present application is filed seeking release of the petitioner in the event of his arrest, learned counsel for the petitioner mainly submits that the petitioner is willing to settle the dispute with the accused and that he has paid some amount to the other accused.

3. In ***Arnesh Kumar v. State of Bihar and another***^[1], the Apex Court held as under:

- 1) 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.
- 2) All police officers be provided with a 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 authorizing 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 authorize 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 41 A 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 Magistrate concerned shall be liable for departmental action by the appropriate high court.

The Apex Court also held that “ the directions aforesaid shall not only apply to the cases under Section 498-A of the IPC 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.”

4. From the above it is clear that the police officer, before arresting any person, has to be satisfied that such an arrest is necessary in terms of clauses (a) to (e) of Section 41(1)(b)(ii) Cr.P.C. and he has to record reasons while making such arrest. Having regard to the said circumstances and since the offences with which the petitioner is now charged are punishable up to 7 years

imprisonment, the Investigating agency shall scrupulously follow the directions of the Apex Court. For the aforesaid reasons, it is ordered that the investigating officer while exercising discretion, whether or not to arrest the petitioner herein, under Section 41 Cr.P.C. shall scrupulously follow the conditions stipulated therein and also the judgment of the Apex Court, before taking any coercive steps against the petitioner.

5. With the above direction, the Criminal Petition is disposed of. Miscellaneous petitions pending, if any in this criminal petition, shall also stand closed.

C.PRAVEEN KUMAR,J

16th April, 2014
sj

[\[1\]](#) 2014(2) ALT (CrI.) 457(SC)