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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.4330 OF 2016

Jignesh Prakash Shah ...Petitioner
Versus
The Central Bureau of Investigation (CBI) and Anr. ...Respondents

Mr.Amit Desai, Senior Advocate a/w Mr.Ameet Naik, Mr.Arvind Lakhavat,
Ms.Anuja Jhunjhunwala, Mr.Abhishek Kale, Mr.Asadulla Thagal i/b Naik
Naik And Co., for the Petitioner.

Ms.Rebecca Gonsalvez, for the Respondent No.1 – CBI.

Ms.S.D.Shinde, APP for the Respondent-State.

***CORAM : RANJIT MORE &
REVATI MOHITE DERE, JJ.***

DATE : 20th DECEMBER, 2016

P.C. :

1. Heard learned Senior Counsel appearing for the petitioner,
learned counsel for the respondent no.1 and the learned APP for the
Respondent – State.

2. The petition is filed seeking a direction to the respondent no.1
not to arrest the petitioner, in the event the preliminary enquiry, being

conducted by the respondent no.1 is converted into an FIR.

3. Mr.Desai, learned Senior Counsel for the petitioner, apprehends that the petitioner will be arrested without following the procedure under Section 41A of the Code of Criminal Procedure and the principles laid by the Apex Court in the case of ***Arnesh Kumar v/s State of Bihar and Anr, passed in Criminal Appeal No.1277 of 2014 (SLP (Cr.) No.9127 of 2013), decided on 2nd July, 2014***. He submitted that earlier, the petitioner was arrested in another case by the CBI, without following the procedure.

4. Ms.Gonsalvez, learned counsel for the respondent no.1, on instructions, submitted that the respondent no.1 is bound to follow the provisions of the Code of Criminal Procedure and in particular, the provision of Section 41A, if the offence is punishable with the sentence upto 7 years. She also makes a statement that subject to the enquiry being converted into an FIR against the petitioner, the provisions of Cr.PC., will be followed and if the provisions of Section 41A and the principles laid down by the Apex Court in the case of ***Arnesh Kumar v/s State of Bihar,***

(supra), are applicable, surely the aforesaid provision and principles will be followed before arresting the petitioner. The said statement is accepted.

5. In the light of the above, Mr.Desai, learned Senior Counsel for the petitioner, states that the grievance raised by the petitioner in this petition, will not survive.

6. Petition is accordingly disposed of.

REVATI MOHITE DERE, J.

RANJIT MORE, J.