

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.7226 of 2016

ORDER:

The present application came to be filed under Section 438 Cr.P.C. by the petitioner-accused seeking release in the event of his arrest in connection with Crime No.173 of 2014 of Railway Kodur Police Station, Kadapa District, registered for an offence punishable under Section 379 IPC.

The case of the prosecution is that the informant owns a lorry bearing No.AP 04 Y 9819 and is running the same on hire basis to Mangampet Birities. It is said that the driver of the lorry used to park the same near Ayyappa Swamy Temple on the main road and driver used to keep the keys in the lorry itself. On 07.07.2014 at about 4.00 p.m. the driver of the lorry parked the lorry as usual and also saw the lorry stationed there on 08.07.2014. But on the next day i.e. on 09.07.2014 he found the lorry missing from the said place. Basing on these allegations a report came to be lodged against unknown persons.

Heard learned counsel for the petitioner and Additional Public Prosecutor appearing for the respondent-State.

It is stated that the accused in Crime No.6 of 2016 are alleged to have been made a confession that they committed theft of various vehicles, including the vehicle involved in the present crime. As per the confession, the police proceeded to Hindupur and

apprehended accused Nos.4 and 5 therein, who purchased the vehicle from accused Nos.1 and 2. The allegation against the petitioner is that he is alleged to have committed theft of the lorry and sold the same. The grievance of the petitioner appears to be that though the offence punishable with imprisonment of less than seven years, the police are trying to arrest him without following the procedure prescribed under Section 41 Cr.P.C.

Section 41 Cr.P.C. reads as under:

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) who commits, in the presence of a police officer, a cognizable offence;
 - (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) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;
 - (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 person 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 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.)

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.”

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. 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 in **Arnesh Kuma's** case *supra*, before taking any coercive steps against the petitioner.

With the above direction, the Criminal Petition is disposed of.

C. PRAVEEN KUMAR, J

May 12, 2016.

Note:
Furnish CC today.
B/O.
KT L/GKV

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