

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

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CRIMINAL PETITION No.11978 OF 2016
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ORDER:

The present Criminal Petition came to be filed by the petitioner/A.1 under Section 438 Cr.P.C., seeking release in the event of his arrest in Crime No.132 of 2016 of Tanuku rural police station, West Godavari district registered against him and others for the offences punishable under Sections 498A IPC and 3 and 4 of the Dowry Prohibition Act, 1961.

2. After arguing the matter for some, learned counsel prays for disposal of the Criminal Petition by directing the police to follow the law laid down in the judgment of the Apex Court in ***Arnesh Kumar v. State of Bihar & another***^[1]. In Arnesh Kumar case (1 supra), it has been 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.”

3. The Criminal Petition is, accordingly, disposed of

directing the police to follow the judgment of the Apex court in Arnesh Kumar case(1 supra).

JUSTICE C. PRAVEEN KUMAR

Date: 18.08.2016

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